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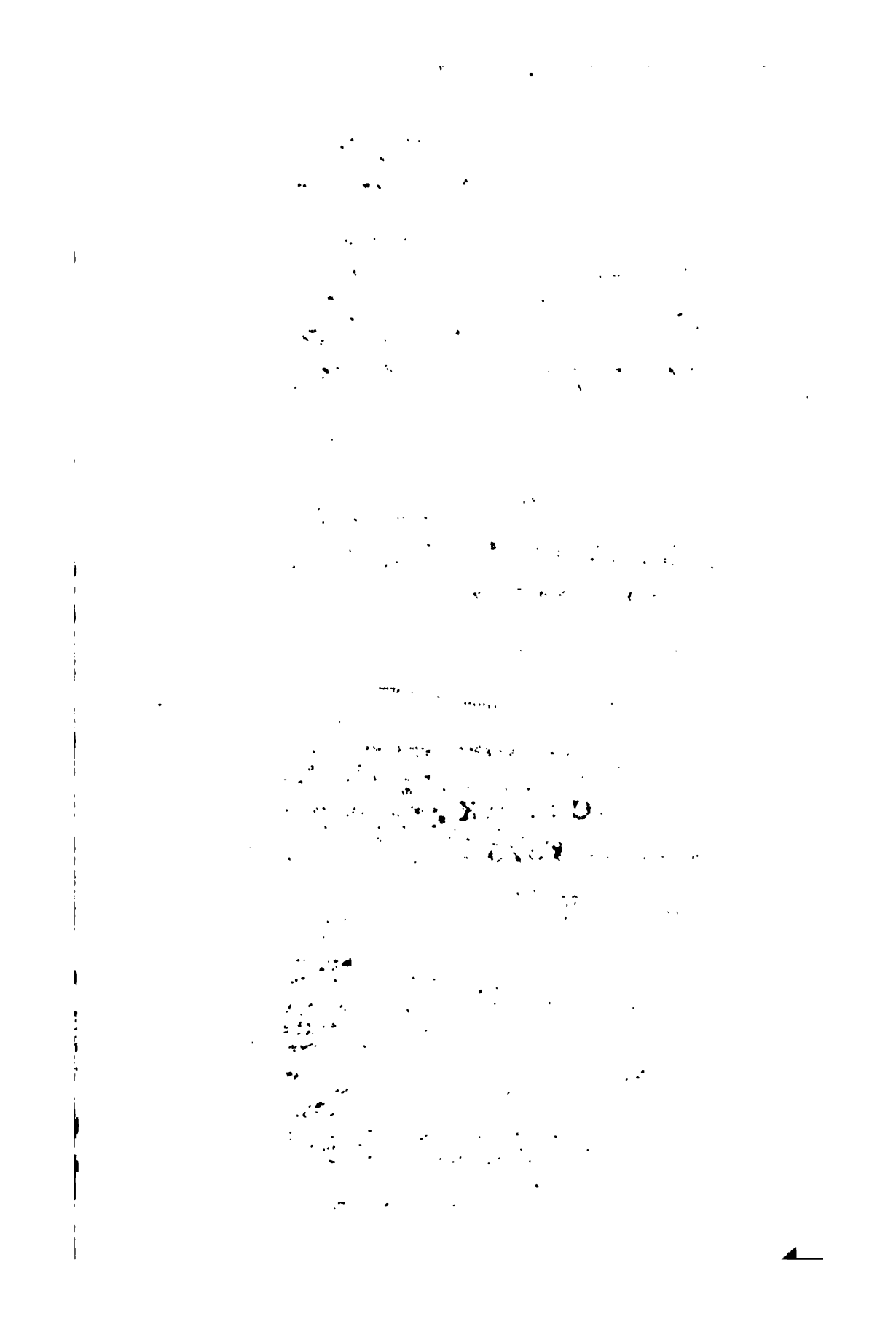

THE

ARTICLED CLERK'S HAND-BOOK,

CONTAINING

A COURSE OF STUDY FOR THE PRELIMINARY, INTERMEDIATE, AND FINAL EXAMINATIONS OF ARTICLED CLERKS,

AND THE

BOOKS TO BE READ AND STUDIED FOR EACH EXAMINATION:

ALSO THE

LAW RELATING THERETO AND ALL THE NECESSARY FORMS:

BEING

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AND A

DIGEST OF ALL THE INTERMEDIATE LAW AND BOOK-KEEPING QUESTIONS, FROM THE COMMENCEMENT OF THE EXAMINATIONS IN 1862 TO THE PRESENT TIME;

WITH

ANSWERS,

AND

A GLOSSARY OF TECHNICAL LAW PHRASES.

BY

R. HALLILAY, Esq.,

Author of "A Digest of the Final Examination Questions and Answers," "An Elementary View of the Proceedings in a Suit in Chancery," &c. &c.

FOURTH EDITION,

By GEORGE BADHAM, Solicitor

(Clifford's Inn Prizeman).

LONDON:

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1873.

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PREFACE TO THE FOURTH EDITION.

THIS Edition of "The Articled Clerk's Hand-book" has been carefully revised, and the necessary alterations made in accordance with the recent statutes down to those of the past session.

The Questions asked at the Intermediate Examinations to the present time have been added.

It is hoped that the work will be found complete.

G. B.

3, *Salters' Hall Court, Cannon-street,*
December, 1872.

PREFACE TO THE FIRST EDITION.

In the following pages the Writer has endeavoured to give to the Articled Clerk a clear and comprehensive guide to the Study of the Law in all its branches, also every information respecting the Examinations, &c., &c., at a small cost. The work is divided into Two Parts; the First Part contains Information upon Study, Law Lectures, Debating Societies, Mutual Correspondence, Common Place Books, &c., &c. (compiled from the best Authorities), a sketch of each of the different branches of the Law, and the books to be read and studied thereon. The Second Part contains full information as to the stamping and enrolment of Articles of Clerkship, and the service under them; also as to giving the Notices of Examination and Admission, and the requisite Forms for such purpose; the proceedings to be taken subsequent to the Examination in order to get admitted, and the necessary Forms; and lastly, a Table of Fees payable.

And to make the Work as useful as possible, a Glossary of Technical Law Phrases is added.

It was proposed to have incorporated the present Work into the Writer's *Digest of Examination Questions and Answers*, but

it having run to a greater length than was anticipated, it was thought better to keep the two distinct, as that course would necessarily have greatly increased the cost of the *Digest;* publishing the present Work as a supplement to the *Digest,* and leaving to the option of the Articled Clerk whether he purchase the two or not.

May, 1859.

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THE

ARTICLED CLERK'S HAND-BOOK.

PART I.

INTRODUCTORY REMARKS.

To become an Attorney and Solicitor is not now an easy matter. Before this can be accomplished no less than three examinations must be successfully passed. One in general knowledge, prior to entering into articles of clerkship, termed the "Preliminary Examination"; another in law, when half the period of pupilage has passed, called "The Intermediate Examination"; and the last or "Final Examination," at the expiration of the clerkship. It will readily be admitted, therefore, that the articled clerk, embryo or actual, requires some guide, some assistance, in his course of study, which we may at once remark must be methodical and thoughtful. "It cannot," says Mr. Warren,(*a*) "be too frequently impressed upon the student that with *method* he may do everything, without it he can do nothing, in legal studies." No study tries the memory like the study of the law. Let, therefore, every one who determines to enter the law commence with a firm resolution of overcoming every difficulty.

"No profession," says Mr. Warren, "so severely tries the TEMPER as that of the law. . . . The young student is perpetually called upon to exercise calmness and patience, though fretted by the most provoking difficulties and interruptions. He is apt to feel in a manner enraged, disgusted, dispirited, when he finds from time to time how much he has utterly forgotten that he had most thoroughly learned; and the increasing difficulties of acquiring legal knowledge and turning it to practical account: all this, moreover, not in abstract speculative studies, but in those which he must promptly master, because his livelihood is at stake, his whole future lifetime is to be occupied in them. Do all that he can; strain his faculties to the uttermost, approach his subject by never so many different ways, and in all moods of mind, he will nevertheless be sometimes baffled after all; and on being assisted by his tutor, or possibly, even by some junior fellow student, be confounded to think that so obvious a clue as he is then supplied with, could have escaped him. How often has the poor

(*a*) Warren's Law Studies, p. 795, 2nd edit.

student on these occasions *banged* his books about, and shutting them up, with perhaps a curse, rushed out of chambers in despair. How apt is the recurrence of such mortifications to beget a peevish, irritable, desponding humour, which disgusts the victim of an ill-regulated temper, with himself, his profession, and everybody about him. Now let him from the first *calculate* on the occurrence of such obstacles, that so he may rather overcome them than suffer them thus to overcome him. True, legal studies are difficult, often apparently insurmountable; but what of that? DIFFICULTY is a friend; the best friend of the student, not his enemy—his bugbear."(*a*) Let not, therefore, the youth who has not at least some taste for the profession of the law enter its portals; for to such it will be a dry and uninviting labour; for even its most zealous votaries find its first approaches difficult and toilsome, but afterwards comparatively smooth and easy.

But those who enter the profession with a liking for it, and also as a means of gaining a livelihood, must come prepared to walk its paths with integrity and without corruption, and to diligently study that profession; "for," says the late Mr. Sidney Smith, "some of the greatest and most important interests of the world are committed to your care; you are our protectors against the encroachment of power; you are the preservers of freedom, the defenders of weakness, the unravellers of cunning, the investigators of artifice, the humblers of pride, and the scourgers of oppression. When you are silent the sword leaps from its scabbard, and nations are given up to the madness of internal strife." And Mr. Justice Coleridge, in his address to the bar on his retirement from the bench, says: ". . . So long as England is enterprising, rich, and free, the law must exercise a prominent influence." How much, then, is there to cause all who enter the legal profession to be scrupulously honourable in their conduct; and to acquire a thorough knowledge of their profession, so that the characters, the wealth, and the well-being of those who have trusted in their honour and knowledge may not suffer.

It is to be lamented that the articled clerk is too often left without any guide or instructor. In most instances he comes into an office raw from school, or perhaps from one of the universities, and is allowed to stagger through his clerkship in a complete fog; at most, perhaps, he has an old copy of Blackstone or Coke upon Littleton, which has mouldered on his principal's bookshelves for years, put into his hands, with injunctions to study it with diligence, and if he should do so, will in course of time make the important and mortifying discovery that more than half of it is obsolete, and must be dismissed from his memory. Mr. Warren forcibly illustrates the danger and injury arising from thus reading a book without being previously instructed by some competent person as to the propriety of so doing. He thus narrates the facts which happened to a friend of his own: "On quitting college he set himself down to a year's solitary and 'hard' reading: devoting special attention upon the second volume of Blackstone's Commentaries, and the corresponding portions of Coke upon Littleton. Conceiving it to be of the utmost importance to become accurately acquainted with the old tenures, he almost committed to memory all those portions of the work in question which related to that subject: perpetually exercising himself in the law of Knight's Service, Homage, Fealty, Escuage, Wardship, Escheat, Lineal and Collateral Warranty, and so forth: 'and you may conceive,' says he, 'my mortifi-

(*a*) Warren's Law Studies, pp. 108, 109, 2nd edit.

cation on discovering how completely my labour had been lost, though I certainly acquired in the same time some valuable knowledge of parts of real property law now too generally neglected.' Another friend had thus 'read up' with great care a particular head of commercial law, and completely mastered all the fine-drawn distinctions to be found in the cases cited in the book which he had been reading. Almost the first thing that befel him on entering chambers [of a pleader] was his confidential intimation to a fellow pupil of the feat which he had performed. 'Ah, my friend,' he replied, 'have you never heard of such and such a *statute*? Thank heaven, it's given the *coup-de-grâce* to all *that* nonsense!'"(*a*) But to resume our more immediate subject, the articled clerk is, in a great many offices, made to do as much copying as can be got out of him, and even to run mere errands, quite unconnected with the office. In fact, he is made to do the duties of an office boy, instead of being treated by his master as a pupil from whom he has taken a large fee and expressly covenanted to teach and instruct in the "practice or profession of an attorney-at-law and solicitor in chancery." It cannot then be wondered at that the articled clerk turns from the law, as presented to him, with loathing and disgust, and pursues with ardour the congenial and exciting sports of cricket, boating, or hunting, or perhaps worse, flies to the exciting pleasures of cards or billiards, to the entire neglect of his studies and the duties of the office. For these reasons a contest at this period of the clerkship generally takes place between the principal and clerk; if the principal prevails, and the clerk is still used as a mere machine for the principal's benefit, he becomes an unthinking plodder; if the clerk succeeds in throwing off all restraint, and refuses to continue the drudgery set before him, he becomes a thorough idler, and loses all taste for business.

Would it not, then, be better and more just for a solicitor to refuse an articled clerk and the premium paid for the supposed instruction, if that solicitor is, either from being too much engaged in his practice, or from being himself too ignorant, unable to give proper instruction to one whom he binds himself so to do?

But should the articled clerk, as is too probable, be placed under the guidance of such a master, he will soon become acquainted with the fact, and he should then determine to overcome the difficulties that present themselves, by industry and attention, and by seeking the information he desires from other sources, which is denied by one who ought to give it. "Biography," says Mr. Wright, "will teach him that many, with perhaps more disadvantages than he has to encounter, have attained the highest eminence. Saunders was a beggar-boy, taught to write by attorneys' clerks in the Temple, and after serving a clerkship, and practising with success at the bar, he was made a Chief Justice, and has left behind him some of the best reports extant. Lord Hardwicke, Lord Somers, Sir John Strange, Lord Kenyon, and Lord Ashburton, arrived at the highest judicial situations, though they were attorneys' clerks."(*b*) And we have several men now living who have risen from the lowest ranks of the profession to the highest.

At the Intermediate Examination formerly distinction was given to those candidates under the age of twenty-six who answered better than others, but this has been discontinued. At the Final Examination prizes

(*a*) Warren's Law Studies, p. 670, 2nd edit.
(*b*) Wright's Advice on the Study of the Law, p. 11.

of books(*a*) are awarded to those in the first class, and certificates of merit to those in the second class. If the candidate is above the age of twenty-six and passes his examination in such manner as would have entitled him either to a prize or certificate of merit, he receives an official letter to that effect from the secretary to the examiners.

The prizes are awarded to candidates in the following order of merit:

1. The Clifford's Inn prize. This prize is given every term.
2. The Clement's Inn prize. This is not awarded every term.
3. Prizes awarded by the Incorporated Law Society. As many as six of these have been given in one term.
4. Besides these prizes, which are open to all articled clerks, there are now several gold medals awarded. Mr. Timpron Martin furnishing one every year for clerks articled in Liverpool, Mr. Atkinson doing the like. The Birmingham Law Society has also established a prize to consist of a gold medal for clerks articled in Birmingham.

Before we dismiss these few introductory remarks, we will briefly comment upon the expediency of the articled clerk's having the assistance of a tutor, but as the author has for some time past been in the habit of reading with gentlemen preparing for examination, he rather quotes the remarks of others than uses any argument of his own. On this subject Mr. Warren says: "We have already spoken of the dangerous facility with which erroneous notions may be acquired by the unaided student, and insisted on the superior advantages enjoyed by him who has placed himself under the guidance of a competent teacher, whose object is to make reading illustrate business, and business illustrate reading. To stimulate *all* the mental faculties; to inculcate early a practical turn of mind; to induce a legal habit of thought, augmenting at once, and with sensible rapidity, both knowledge and the *power of using it*."(*b*) And Dr. Arnold, on the same subject, says: "He wants it daily; not only to interest and excite him, but to dispel what is very apt to grow around a lonely reader not constantly questioned, a haze of indistinction as to a consciousness of his own knowledge or ignorance. He takes a vague impression for a definite one; an imperfect notion for one that is full and complete; and in this way he is continually deceiving himself."

But should the student, notwithstanding, think fit to pursue a solitary course of reading, we will endeavour, in the following pages, to point out to him how that reading should be conducted, as to the benefit of attending law lectures, mutual correspondence, &c., &c., and the books he should read.

First, however, we will advert to the examination in general knowledge prior to being articled.

(*a*) The successful competitor has his choice of books, but they must be such as relate either to law or jurisprudence or history.

(*b*) Warren's Law Studies, pp. 670, 686, 2nd edit.

CHAPTER I.

SECTION I.

AS TO EXAMINATION IN GENERAL KNOWLEDGE.

By the operation of the 23 & 24 Vict. c. 127, ss. 2, 5, and 8, and the Orders made thereon, it is provided that from and after the first day of Hilary Term, 1862, every person proposing to enter into articles of clerkship, not having been called to the degree of utter barrister in England, or not having taken the degree of B.A., or LL.B., at the universities of Oxford, Cambridge, Dublin, Durham, London, the Queen's University in Ireland, or B.A., LL.B., M.A., or LL.D., in any of the universities of Scotland, or passed the first public examination before moderators at Oxford, or the previous examination at Cambridge, or the examination in arts for the second year at Durham, or the matriculation examination of the universities of London or Dublin, although not placed on the first division of such matriculation examination, or have successfully passed one of the local examinations established by the University of Oxford, or one of the non-gremial examinations established by the University of Cambridge, or the examination for the first-class certificate of the College of Preceptors, must produce to the Registrar of Attorneys a certificate that he has successfully passed an examination by special examiners, duly appointed, and that such last-mentioned examination be held in the months of February, May, July, and October on such days and at such places as the examiners shall from time to time appoint, and consist of two parts:

Part 1.

1. Reading aloud a passage from some English author.
2. Writing from dictation.
3. English grammar.
4. Writing a short English composition.
5. Arithmetic.—The first four rules, simple and compound.
6. Geography of Europe and of the British Isles.
7. History.—Questions on English history.
8. Latin.—Elementary knowledge of Latin.

Part 2.

Each candidate must also offer himself for examination in *one*, at his selection, of the following subjects:

1. Latin.	3. French.	5. Spanish.
2. Greek, Modern or Ancient.	4. German.	6. Italian.

The examiners are appointed each year; and it is directed—

That the examinations shall be conducted in the Hall of the Incorporated Law Society in Chancery-lane, *or* at the following towns, under the supervision of *two local* Solicitors, to be appointed by the examiners:

Birmingham.	Carmarthen.	Lincoln.	Plymouth.
Brighton.	Chester.	Liverpool.	Salisbury.
Bristol.	Durham.	Maidstone.	Shrewsbury.
Cambridge.	Exeter.	Manchester.	Swansea.
Cardiff.	Lancaster.	Newcastle-on-Tyne.	Worcester.
Carlisle.	Leeds.	Oxford.	York.

Every person so applying to be examined must give *one calendar month's notice* in writing to the Secretary of the Incorporated Law Society, Chancery-lane, of his desire to be examined, and state in such notice the language detailed in Part 2 in which he proposes to be examined, the place at which he wishes to be examined, and his age and place of education, and such notice must be signed by the candidate.

The following is the form of notice to be given of intention to apply to be examined:

Notice is hereby given, that A. B., of aged who was educated at intends on the and days of next, to present himself for examination at previous to entering into articles of clerkship, and that he proposes to be examined in the language.

Dated the day 18 . A. B.

The examiners are, five calendar months previous to the time appointed for taking each examination, to leave with the Registrar of Attorneys a list of the books selected by them for such examination in the languages enumerated in Part 2, and a copy of such list may (by a candidate) immediately thereupon be obtained from the registrar.

If the examiners conducting such examinations be satisfied with the proficiency shown by the candidate, they will sign a certificate to that effect.

The fee paid to the Council of the Incorporated Law Society for this certificate is 1*l.* if the candidate be examined in London, and 2*l.* if examined in the country.

In concluding this subject, we may add that by the proviso of the 8th section of 23 & 24 Vict. c. 127, the judges, or any one or more of them, may, if they or he think fit, under special circumstances, dispense with this examination, either wholly or partially. The present Lord Chief Justice, Sir Alexander Cockburn, and the present Lord Chief Baron, Sir Fitzroy Kelly, have given this proviso a very liberal construction, and granted several dispensations to managing clerks. The mode of application is by petition, supported by the necessary evidence.

We may remark, however, that the judges have, from want of sufficient impartial evidence, given dispensations not over judiciously. This fact caused the Council of the Incorporated Law Society to move in the matter, and a deputation from that society waited upon the judges having power to grant dispensations, and in answer their lordships intimated that as time goes on clerks who enter attorneys' offices, with full notice of the regulations which render the Preliminary Examination necessary, and who become managing clerks, cannot expect to have extended to them a dispensation which may justly be extended to those who commenced their employment at or shortly before the establishment of the Preliminary Examination. And that after the Act imposing the examination had been in operation for ten years, the claims for dispensation would be very sparingly entertained and conceded. Their lordships also intimated that, in future, they would be glad to avail themselves of the assistance of this society in investigating the circumstances of any cases which might hereafter appear to be doubtful, when submitted for their

consideration; and that a postponement only of the time at which the Preliminary Examination should take place, and not its entire dispensation, would, in their opinion, satisfy the requirements of the profession in many instances.

The whole of the information and correspondence hereon will be found in the *Law Examination Reporter*, for Easter Term, 1867.

BOOKS TO BE READ.—As to the books to be read for the "Preliminary Examination" no doubt most of these will have been studied at school; but for the benefit of those who have allowed some years to elapse after leaving school before they proposed entering the profession, we give the names of a few works which will be found serviceable.

The most excellent work on grammar and English composition is "Angus on the English Language," but it is a heavy book and contains much that is not necessary; and if the student is not inclined to be laborious, we advise "Allen and Cornwell's School Grammar," or "Adams on the English Language." We may add, however, that if the student is well versed in his Latin grammar (of which "Edward's Accented Latin Grammar" is advised), he need trouble himself but little as to his English grammar.

On Geography, "Cornwell's School Geography" is the most suitable. The student must, however, practise himself in the study and drawing of maps, in order that he may be able to answer many of the questions on this branch.

The best and shortest History for these examinations is "Collier's History of the British Empire," or "Goldsmith's History of England," by Pinnock, will serve for this purpose. But we may remark that these histories, or in fact any other that we ever read, will not answer questions such as "Give a history of the life of the Black Prince," or "of Mr. Fox," and the like. Answers to questions such as these can only be obtained from biographical sketches.

Of the subjects in Part 2, of course the candidate selects the language himself, gives the Registrar of Attorneys notice thereof, as stated *supra*, and the registrar then informs the candidate the particular book or part he is to study in that language.

The student will find several sets of papers of questions asked by the examiners at the "Preliminary Examination" in a subsequent part of this work.

SECTION II.

THE ARTICLES OF CLERKSHIP, ETC.

The preliminary examination successfully passed, the next thing is to enter into articles of clerkship to some attorney and solicitor. No particular form of articles is required,(*a*) but a form is generally used, which the attorney always furnishes. If the clerk be not of full age, his father or guardian must be a party to the articles and covenant for him.

The articles bear a stamp duty of 80*l.*, which, properly speaking, should be impressed at the time of their execution, and if this be not done, formerly the omission could only have been remedied within six months afterwards. However, by the 33 & 34 Vict. c. 97, sect. 43, the articles

(*a*) *Ex parte Forrest*, 14 L. T. Rep. (N.S.) 285.

may be stamped at any time on paying the penalty imposed by this Act, which varies according to the time the articles have remained unstamped.

Within six months after the date of the articles, an affidavit of the attorney having been duly admitted, and of the execution of the articles by the attorney and clerk, specifying their names and abode and the day of execution, must be made and filed with the proper officer of the Court of Queen's Bench, and the articles will thereupon be registered by him. If not registered within this period, the service of the clerk will count from the registration, and not from the date of the articles, unless the Court otherwise orders.(*a*) Good reason accounting for the delay must be shown.(*b*) The articles cannot be registered until they have been stamped.(*c*) The above also applies to any assignment of articles.

The articles, and any assignment thereof, must, within three months after they are registered and enrolled as above pointed out, be produced to the Registrar of Attorneys and Solicitors for registry by him in his book; and if this be not done within the above time, the service will count from the date of such production and registry, unless a judge of one of the Superior Courts otherwise orders.(*d*)

The following is the form of affidavit above referred to:

IN THE QUEEN'S BENCH.

I, A.B., of , make oath and say, that by articles of clerkship [or assignment], dated the day of , in the year one thousand eight hundred and , and made between C. D. of , one of the attorneys of Her Majesty's Courts of Queen's Bench, Common Pleas and Exchequer of Pleas at Westminster, and a solicitor of the High Court of Chancery, who has been duly admitted an attorney and solicitor of the said Courts, of the one part; and E. F., of , and H. F., son of the said E. F., of the other part; the said H. F., for the considerations therein mentioned, did put, place, and bind himself clerk to the said C. D., to serve him in the profession of an attorney-at-law and solicitor in Chancery, from the day of the date of the said articles, for the term of [five or four or three] years, thence next ensuing, and fully to be complete and ended, and which said articles were in due form of law executed by the said C. D., E. F., and H. F., on the day of the date thereof, and that the several names C. D., E. F., and H. F. set and subscribed opposite to the several seals affixed to the said articles, as the parties executing the same, are of the proper and respective handwritings of the said C. D., E. F., and H. F., and were written and subscribed in the presence of this deponent, and of F. B., of , and that the names A.B. and F. B., set and subscribed to the said articles as witnesses, to the due execution thereof, are of the proper and respective handwritings of me this deponent, and of the said F. B.

Sworn, &c. A. B.

If the clerk has taken a degree, or passed such an examination as entitles him to be admitted after four years' service, he should swear to that fact.

SECTION III.

AS TO THE INTERMEDIATE EXAMINATION.

We will now suppose that the candidate wishes to prepare for his intermediate examination. As to the time at which this examination takes place, it is (to carry out the 23 & 24 Vict. c. 127) ordered—

(*a*) 6 & 7 Vict. c. 73. ss. 8, 9, 20.
(*b*) *Ex parte Leggett*, 3 Jur. 1218; *Ex parte Gliss*, 3 L. T. Rep. (N.S.) 268.
(*c*) *Ex parte Williams*, 3 Jur. 160.
(*d*) 23 & 24 Vict. c. 127, s. 7.

That all persons under articles of clerkship executed after the first day of January, 1861, shall be examined either in the term in which one-half of his time of service shall expire *or* in one of the two Terms next before, *or* one of the two Terms next after, one half of his term of service, in such elementary works on the Laws of England as may be appointed by the examiners, and in mercantile book-keeping: and that *the names of the books selected for examination in each year may be obtained from the secretary of the examiners in the month of* JULY *in the previous year.*

Such intermediate examination is conducted in each Term by the examiners appointed under the 6 & 7 Vict. c. 73, the Orders of the Master of the Rolls of 13th of January, 1844, and the Rules of the Common Law Courts of Hilary Term, 1853, at the Hall of the Incorporated Law Society.

The applicant for such examination must give to the Registrar of Attorneys *one calendar month's notice* in writing before the commencement of the Term in which he desires to be examined, and seven clear days before the commencement of such Term leave with him the articles and assignment (if any), duly stamped and registered, under which the applicant is serving his clerkship, with answers to the questions as to his due service and conduct up to that time.(*a*)

The following may be the form of notice referred to in the above Order:

Notice is hereby given that A. B. of , who is now under articles of clerkship to C. D. of , [*or*, who has served under articles of clerkship to C. D., and is now serving under an assignment of such articles of clerkship to E. F., *or*, as the case may be] intends to apply in Term next for intermediate examination, pursuant to the Act 23 & 24 Vict. c. 127, s. 9, and the Orders made thereon.

Dated this day of 187 . A. B.

Upon compliance with such regulations, if the major part of the examiners present at and conducting such examination are satisfied with the answers of the candidate, they, or the major part of them, are to certify the same under their hands to that effect.

If the applicant should fail to pass such intermediate examination to the satisfaction of the examiners, he may attend the examination in the next or any subsequent Term; but if he should not have passed such intermediate examination before the expiration of the second Term next after one-half of his term of service, his examination at the expiration of the term of service under his articles shall be *postponed* for so many Terms as may intervene between such last-mentioned Term and his passing such intermediate examination, or for such shorter time as the examiners shall in each case direct.

The fee payable on depositing the articles is 5*s.*, and for the examiners' certificate 15*s.*(*b*)

When the candidate presents himself for examination he will have a number given to him, and will take his seat at the *end* of the table on which such number is placed.

A paper of questions will be delivered to him, with his name and number upon it, containing questions classed under the several heads of—

(*a*) About a fortnight or three weeks before the examination the candidate will receive from the secretary to the examiners a notice requiring his attendance, for the purpose of being examined, and the paper of questions referred to in the above Order, which are very similar to those used at the final examination, a copy of which will be found in a subsequent part of this work.

(*b*) See Orders, 31st January, 1863.

1. Preliminary.
2. Chitty on Contracts.
3. Williams on the Law of Real Property.
4. Smith's Manual of Equity Jurisprudence.(*a*)
5. Book-keeping.

Each candidate is to endeavour to answer every question in each branch.

The answers under the above-mentioned heads are to be written on one side only, on *separate* papers for each head; and the answers to each paper shall be written *concisely*, in a plain and legible manner, and *signed*.

The candidates are to finish their papers by *four* o'clock, but *no answers will be received from any candidate before half-past one o'clock*.

When the candidate has finished his answers, he will deliver them (tied up), together with his printed copy of the questions, to the secretary, at the examiners' table, and he will exchange the ticket given on his entrance for another ticket which he is to give to the person at the door when he goes away.

After the examination has begun, no candidate is to leave the room (without permission obtained from the examiners) until he shall have delivered in his answers; and any candidate who leaves without permission will not be allowed to return.

No candidate will be allowed to consult any book during his examination, or to communicate with, receive assistance from, or copy from the paper of another; and in case this rule is infringed, the names of both such persons will be immediately struck out of the list of candidates.

There are *seven* questions asked at this examination from each of the legal text-books required to be read by the candidate; and five questions on book-keeping. A digest of them with answers from the commencement will be found in a subsequent part of this work.

The examiners ask the candidate to *endeavour* to answer *all* the questions, but they will pass a candidate who answers a *majority* of the questions correctly.

BOOKS TO BE READ.—These are named by the examiners as stated *supra*.

(*a*) These are the books for 1872, but of course may be varied for subsequent years.

CHAPTER II.

SECTION I

ON MEMORY, ITS ABUSE AND ITS AIDS.

It is a general complaint amongst articled clerks that they have bad memories; do what they will, try ever so often, they cannot remember what they read. But let us observe at the outset, that men are no more born with minds naturally dull and indocile than with bodies of monstrous shapes, which, as we all know, is a thing of rare occurrence. Defects of memory then, are no doubt, defects that may be remedied, if not entirely cured: they take various forms; some memories at once seize the matter presented to them, but as quickly lose it; others have the greatest difficulty in laying hold of a subject—have to exercise long and weary attention—when once there, however, it remains fixed. Notwithstanding all this, we again assert that the machine is generally good, but it is not skilfully used and managed. Many memories are weakened by disuse, and may therefore be strengthened by exercise, gradual at first, increasing as the memory strengthens. It must be clear to every one that, as the brain is the organ of the mind, whatever cause tends to strengthen the former must aid and strengthen the latter. Mr. Raithy says, "Not only the *inclination* to recollect, but the very powers themselves of recollection are impaired and at length *lost* by disuse."

It is said, that no study tries the memory like the study of the law; therefore the law student should use all proper methods to aid and strengthen his memory, for no system can *create* one. Too many students pursue a course of reading which tends to weaken, rather than strengthen, the memory. Knowing his memory is weak to begin with, the student leaves all his reading until about two or three months prior to his examination, then plunges headlong into his books without any previous training. He sits down at his desk and reads for three or four consecutive hours, and sometimes even more than this, and in that time his eye passes over a great number of pages containing a large amount of matter almost, if not entirely, new to him. He gets up from his task thinking he has done a good day's work, and never gives the subject any further thought that day, and the next is chagrined and mortified to find his previous day's hard labour so barren; in fact, that he recollects little or nothing of the matter. He again sets to work in the same way as before with the like result, and, in the end, gets disheartened, begins to think he is a fool, and feels inclined to give up his profession. An apt illustration of the course just pointed out is that of filling a bottle with liquid, for if you attempt to pour in the liquid too quickly, half of it is spilt and wasted. Instead of reading in the manner just mentioned, we would advise the student to commence with *careful* reading for *one* hour at a time; this done, let him close his book and take a sharp walk and try how much of his reading he

remembers. We say "a sharp walk," for it has been truly said, the mind works best when the body is in motion, and both body and mind get refreshed and strengthened by the exercise. Or, if the student prefers, he may test his memory by self-examination from some book of questions containing a corresponding chapter to the one he has been reading. As the memory strengthens the student may increase the number of hours of study, but many writers assert that not more than two *consecutive* hours can be given to legal study with advantage to the student. We are also strongly of opinion that, even with advanced students, it is by far the most beneficial course to read not more than six hours a day, divided into at least two portions, the remainder of the day being given to thought, examination, and physical exercise. In these remarks we are borne out by writers such as Sir Matthew Hale, Sir Eardley Wilmot, Mr. North, the author of the "Advocate," and others.

One of the best methods used for aiding memory is the association of ideas; a simple word or a sight will often call up a whole passage, which otherwise would have remained occult, or lost to recollection. The force of association may be exemplified very strongly in the following anecdote:—A gentleman was in the habit of amusing himself by experimenting upon this power. One day, as he was taking a drive with his servant seated behind him, they had to cross a bridge where the scenery was particularly grand and striking; here he suddenly turned round and exclaimed, "John, do you like eggs?" "Yes, sir," answered John. The gentleman drove on, and nothing more was said. That day twelve months the gentleman drove out again in the same direction, with the same servant seated behind him; upon arriving at the bridge, he turned round abruptly as before and said, "John, how do you like them?" "Poached, sir," answered John, without a moment's hesitation. Here, we must admit, is a striking instance of the power of association of ideas in recalling a circumstance which otherwise would have been entirely forgotten. No doubt John, on the first occasion of his master's strange inquiry, at a place so wholly unconnected with the subject of it, turned the matter over in his mind and wondered at it; and, on again approaching the spot a year afterwards, the bridge brought back the odd interrogatory, and when the second equally strange question was asked, he at once connected the two and answered accordingly.

Now we will see how this plan may be applied to the study of the law. Let us take the case of an estate tail as an example. The student must fancy his father to be the tenant for life under the settlement; that the estate (which must be one well known to him) is burdened with pin money for his mother during his father's life, and a rent-charge by way of jointure if she survives his father; that subject to these limitations that he (or his elder brother, if one) is the first tenant in tail, &c. Let him remember that his father is the protector of this settlement, and that the entail cannot be effectually barred without his consent, &c.; in fact, keep himself and his own family inseparably connected with the supposed entail, and he will always have a date to fall back upon to aid his memory. The same plan may be adopted with an estate for life and the powers incidental. Still keeping his father before him and the same estate and supposed entail, he will, after reading, more readily remember that *his* father, the tenant for life (rather than the mere letter A.), may cut wood for repairs of the mansion house, &c., work existing mines on the estate, &c., but cannot hurt *him*, the tenant in tail in remainder, by cutting timber or committing waste, &c. The student thus has not only an association of ideas, but a *chain* of

ideas linked one within the other, which he may carry out to almost any length where the principles of the law are concerned, and even in practice to some extent; as by making himself a supposed plaintiff, and one of his friends a supposed defendant, and so work out the action or suit.

When it becomes necessary to commit rules or maxims to memory, do not attempt to master them all at once; learn one by careful reading and reflection before you attempt another, and if there be an illustration pay attention to that. Great assistance on this point will be found by writing out one of the rules or maxims and putting it in the pocket, and whenever an opportunity occurs pulling it out and reading it. This may be done in those spare and otherwise useless moments when riding on a railway or in an omnibus, or even when walking. This plan is also particularly applicable to learning times of procedure.

As to committing to memory generally. It is a common phrase "do not parrot." This is good advice in its way, and it would be desirable if we could get the reason for all we read, to apply the maxim "Scire autem proprie est, rem ratione et per causam cognoscere," but this is often impossible, especially on points of practice. And some students find great difficulty in understanding even the principles of the law: when this is the case, when the comprehension is dull, learning by heart *must* be resorted to, and the intellect awakened by constant questioning and explanation by some one competent to interrogate and instruct.

Another mode of assisting the memory is to try to *forget* that which you have been reading. This method has sometimes succeeded when all others have failed.

As to recollecting dates or Acts of Parliament: it is not often necessary to do this, but where it is do not try to learn many at once; and when a few are fixed in your memory, learn others by *comparing* them with those you already know; thus you know that the Statute of Frauds was passed in the reign of Car. II., and it is easy to recollect that the Statute of Uses was *not* passed in that reign, but in a prior one, viz., in that of Hen. VIII., and so on. When a given number of actions, pleas, or the like have to be learned, always get the *number* of events first, and that will assist in recollecting whether those you enumerate are all there, and are correct. Thus interpleader applies to *four* actions, viz., assumpsit, debt, detinue, and trover. Remark, also, that the two first named are of one and the same class of action, viz., *contract*, and the two latter of another, viz., *tort*. Careful attention to these little points is a great aid to the memory. Another mode is, when there is an enumeration to take the capital letters of each word and see what they spell; thus, take the last as an instance, the capital letters make *add at*. Again, joint tenants require four unities, viz., possession, interest, title, time; the latter has reference to all the preceding unities, and should come last: the capital letters here make *pitt*. This mode not only helps the memory, but enables you to discover whether you are enumerating in order.

The student should guard against burdening his memory with unnecessary matter. For example, the examiners do not expect candidates to be able to cite every statute, much more to give the chapters and sections of Acts of Parliament. It is therefore trying the memory unnecessarily to attempt this. It is quite sufficient for all ordinary purposes to remember the reign in which the most important acts were passed, such as the Statute *De donis*, the Statute of *Quia emptores*, the Statute of Uses, the Statute of Frauds, the Wills Amendment Act of 1837, the Procedure Acts, and the like.

SECTION II.

HOW TO STUDY.

Whatever course of reading the student adopts, he should always remember that his object is two-fold: to acquire and retain legal knowledge, and at the same time to discipline his mind to engender habits of legal *thought*. "A student should labour by all proper methods," says Dr. Watts, "to acquire a steady fixation of thought. The evidence of truth does not always appear immediately, or strike the soul at first sight. It is by long attention and inspection that we arrive at evidence; and it is for want of it that we judge falsely of many things." Whatever is read should be read with moderate slowness, and when read, pondered upon. *Sat cito, si sat bene*, was Lord Eldon's favourite motto. "A cursory and tumultuary reading," says Lord Coke, "doth ever make a confused memory, a troubled utterance, and an uncertain judgment." It can surely require no arguments to convince the most obtuse that there can be no benefit derived from reading, if what is read is not understood, and retained in the memory. It is true that when the study of the law is first commenced, the efforts made to fix the attention are painful and unsatisfactory; but this is the case on the commencement of any new literary pursuit. And this wears off as we become familiarised with our subject, and as our knowledge increases, we soon learn to distinguish what parts are the most important to us, and accordingly direct our greatest attention upon those parts.

When treating of this subject, Mr. Warren says: "While, however, the student is warned against falling into a hasty, slovenly, superficial habit of mind, let him not fall into the opposite extreme—that of sluggishness and vacillation. Careful and thoughtful reading does not imply a continual poring over the same page or subject. The student might in such a case justly compare himself to the pilgrim stuck in the Slough of Despond. Because he is required to look closely at each individual part, in order thoroughly to comprehend the whole, let him not suppose that he is to scrutinize it as with a microscope. What is required is simply *attentive reading*. If he cannot, after reasonable efforts, master a particular passage, let him mark it as a difficulty, and pass on. He will by and by return, in happier mood, with increased intellectual power and knowledge, and find his difficulty vanished. The student's reading, however, must not only be thus attentive, it must be *steadily pursued*."(*a*)

The foundation of all study should be laid by a careful perusal of elementary works; principles preceding practice in every branch of the law. The student should make himself thoroughly acquainted with general principles, and he will then have something to direct him in the difficulties that will constantly arise. They will guide him in determining points that come before him in practice; when we give the reason for our argument, and state the principles upon which it is based, we are the more certain to carry conviction. In fact, theory and practice should, as far as possible, go on together. If a student is unacquainted with general principles, he will, in all his future studies and practice labour under heavy disadvantages. What benefit can be had from a perusal of

(*a*) Warren's Law Studies, p. 787, 2nd edit.

the reported cases if the principle of law upon which the judgment is founded is not known. "As reason," says Lord Coke, "is the soul of the law, it cannot be said that we *know* the law until we apprehend the reason of the law; that is, when we bring the reason of the law so to our own reason that we perfectly understand it as our own; and then, and never before, we have an excellent and inseparable property and ownership therein, so as we can neither lose it, nor any man take it from us; and we shall be thereby directed very much, the learning of the law being chained together in many other cases. But if by his study and industry the student make not the *reason* of the law *his own*, it is not possible to retain it in his memory; for though a man can tell the law, yet if he know not the reason thereof, he will soon forget his superficial knowledge; but when he findeth the right reason of the law, and so bringeth it to his natural reason, then he comprehendeth it as his own; this will not only serve him for the understanding of the particular case, but of *many others;* for *cognitio legis est copulata et complicata;* this knowledge will long remain with him."

As we have before observed, the student must carry out his labours methodically. We strongly advise him to master not only one book, but one branch of the law, before he commences another. For instance, suppose the student has gained a dim notion of the practice of the court of equity, with all the various times for taking the necessary steps in a cause, which are so much the test of memory, and then flies to the practice of the courts of common law, with its various times and forms of procedure, what a confused and misty idea he must necessarily gain of the two separate branches; both are jumbled together, equity will be substituted for law and law for equity in inextricable confusion. But after the student has gained a clear and firm grasp of one branch of the law, he may then safely go on to another.

There is some diversity of opinion as to whether a book should be read over in the *first* instance in a cursory manner, so as to gain merely a general knowledge of the whole work, and afterwards be carefully studied; or should from the first be diligently perused and studied. The author has generally adopted the latter course, but which of the two courses should be adopted is left with the student.

As to the time the student should give each day to study, we will, in addition to what we have said in the previous section, give a few opinions of writers on the subject. "The attempt to parcel out a particular period of the day," says the commentator on North's Discourse, "or a certain number of hours as sufficient for the study of the law, is perfectly nugatory; it is as though a physician were to prescribe a certain dose of medicine for all his patients without regard to their age, strength, or constitution. '*Four* hours in a morning close application to his books,' says Mr. North, 'is the sufficient quantum;' while, according to Sir Eardley Wilmot, '*six* hours of severe application' is necessary."(*a*) But, as before observed, no exact rule can be laid down, so much depends upon each particular case—the capacity of the student, the work he is studying. One student shows far more aptitude than another—one work requires greater care and attention in its perusal than another; and also the state of the faculties from one day to another must be taken into consideration. We cannot compel the mind to put forth the same powers from day to day. One day it is clear, strong, and powerful, capable of comprehending

(*a*) Notes and Illustrations to Roger North's Discourse, pp. 58, 59, note.

and retaining anything it may be engaged upon; another it is just the reverse,—do what we will, try never so often and determinedly, yet we cannot fix its attention; the eye wanders over the page, but the mind receives no impression. When this is found to be the case, it is useless to continue the subject further, for no benefit will be received; shut up therefore your book and rest awhile; in time you will return and renew your studies with renovated faculties, and to proper advantage. But the student must be careful to distinguish between such feelings as these, and the mere love of pleasure, or those of sheer indolence.

Respecting the number of books the student should read—he will have learned from what we have already said that it is not the *quantity* but the *quality*—not the *extent*, but the *manner* of reading that leads to proficiency. Lord Eldon did not read many books, yet how learned was he! "Attentive reading," says Warren, "frequent reflection upon what is read, and application of it to business, are the only guarantees of distinctness of thought and recollection."(*a*) With a great many students, no sooner do they begin to read a book than they have an insane desire to get through it as fast as possible, forgetting that to *read* is not necessarily either to *understand* or to *remember*. If many works are read, a great deal of time must be consumed, which would have been far more advantageously employed in thought. "One book," says Phillips, "well digested is better than ten hastily slubbered over." A law book cannot be read like a novel —taken up and put down at whim or pleasure. "Men who read for amusement or instruction on general topics," says Mr. Wright, "may read as they please and acquire information. It is not necessary for *such* purposes critically to weigh sentence after sentence; and where amusement is the object, to cast the eye over the page may be sufficient. But where knowledge is to be acquired, which depends upon the construction of words, and an accurate idea of scientific terms, the student must advance with patience and resolution proportionate to his undertaking. Books which every man reads may be perused as a newspaper; but such as contain information of an abtruse nature, requisite to be permanently impressed on the mind, must be repeatedly read, and with minute attention."(*b*) "Our reading keeps proportion with our meats," says Phillips, "which if it be swallowed whole is rather a burthen than nourishment."

When a passage has been read, the student should close the book and calmly ponder upon what he has read, to see that he understands and retains it; and if, upon this examination of himself, he finds he has gained but a dim notion of the author's meaning, let him reperuse the subject, and again examine himself till he finds that it is firmly rooted in his mind. If, however, after the student has frequently read and studied any particular passage, he fails to understand it, let him seek out some one who is capable of elucidating the point, and have his doubts cleared up; but if this cannot be done, as before advised, let him mark the passage with a pencil, and pass on, and when his mind is clear, again return to it, and most probably the difficulty will disappear. When he comes to a word or phrase he does not comprehend, he should immediately take up his law dictionary, which no student should be without, and search out its meaning before he proceeds further; for it is useless to read what is not fully understood. By this mode of study the reasoning powers will be strengthened, and the

(*a*) Warren's Law Studies, p. 829, 2nd edit.
(*b*) Wright's Advice on the Study of the Law, p. 27.

path to further studies greatly eased. In reading, too, the memory will be greatly assisted by looking to the words as referring to a case which the student should form in his mind. General maxims, first principles and definitions should be committed to memory.

But the articled clerk must not be content with reading alone, and become a mere student. He must attend at the office, read the correspondence, and acquaint himself with the mode of conducting business there. He should also acquire a knowledge of making out bills of costs, &c. Unless these duties are attended to, the clerk will, when he comes to practise for himself, be utterly lost,—all at sea as to the practical duties of an attorney. He will also do well to give some attention to the mechanical duties of the office, for although it is wrong to compel an articled clerk to be constantly performing the duties of a writing clerk and office boy, yet if he does not gain any knowledge of the mode of performing them, he will be unable to know, when he comes to have clerks of his own, whether they are performing their duties properly. The articled clerk should also attend the various courts of law and equity, where much valuable information may be obtained.

COMMON-PLACE BOOKS.—As to what are termed common-place books, there is great variety of opinion. Mr. Wright says: "To the young student I fear they would prove *more injurious than useful*, and tend more to weaken than assist the memory. . . . . On first entering upon the study of the law I am confident that it will be better to employ the time in reading than in transcribing particulars, which a little acquaintance with the principles and the practice of the profession will render useless."(*a*) They are, however, recommended by Sir Matthew Hale, Sir S. Romilly, and others, who advise the student to copy into a common-place book the substance of whatever is read; Sir S. Romilly thinking it "the *only way* in which law books can be read with much advantage." The object for which a common-place book is used, however, ought to be to note down points of great importance, and those which it is particularly desired to remember. The great fault of these books is that they lead the articled clerk to note down in his book what ought to be noted in his memory. It is far better to give an extra amount of attention to a particular passage, and thus retain it in the memory, than note it down in a book, and then forget it. And the student may easily invent a series of marks to be made in the margin of his books, which will draw his attention to the passages thus marked. The same mark should be always used to denote the same meaning. Mr. Warren, in commenting upon the remarks of those in favour of common-place books, says, "but it may be suggested, why not rather imprint it in his memory? Why beget the habit of reliance rather on a common-place book than on the memory?"(*b*) Again, if the note book is often used it will become bulky and voluminous, and thus defeat the end for which it was designed. Mr. Warren, again treating of these books, says, "he knows one individual, who, with prodigious industry, had compiled four thick folio volumes, very closely written, and most systematically distributed; and who subsequently acknowledged to the author, that it had proved to be one of the very worst things he had ever done; for his memory sensibly languished, for

(*a*) Wright's Advice on the Study of the Law, pp. 188, 191; see also Warren's Law Studies, pp. 796, 854-9, 2nd edit.

(*b*) Warren's Law Studies, p. 796, 2nd edit.

want of food and exercise, till it lost its tone almost irrecoverably."(a) If, however, a notebook is used, brevity must be strictly attended to, and the matter noted should be in the student's own language, containing an epitome of the whole passage, and not simply a copy of the passage from the book he is reading, unless it be something which strikes the student as being very remarkable. We think that for the purpose of analysis and exemplification, the note book may be used with advantage. We will endeavour to illustrate what we mean. Supposing the student has been reading the fourth chapter of Mr. Serjeant Stephen's Commentaries on the Laws of England, we think he might with advantage make the following analysis :—

Estates of Freehold not of Inheritance are of four kinds.

1. AN ESTATE FOR LIFE (created by act of the parties) may be either for the life of the donee or grantee, or for the life of another, in which latter case it is termed an estate *pur autre vie.*	POWERS AND INCIDENTS. The tenant is entitled to *estovers* or *botes, i. e.,* an allowance of wood for repairs, fuel, and the like. Cannot commit waste, *i. e.,* destroy or alter any part of the tenement, &c., to the injury of those in remainder or reversion. Entitled to emblements when his estate determined by the act of God or the law. May lease the estate, and his lessee entitled to emblements or to hold over till end of current year's tenancy, paying rent.
2. AN ESTATE TAIL AFTER POSSIBILITY OF ISSUE EXTINCT is created by act of God; as where one is tenant in *special* tail, and the person from whose body the issue was to come is dead.	POWERS AND INCIDENTS. The tenant of this estate has the same powers, with the *additional* one of committing waste, as a tenant for life, and with this one exception, subject to same incidents.
3. AN ESTATE BY THE CURTESY OF ENGLAND arises by operation of law, and is that estate which the husband takes after the death of his wife in her lands of inheritance (legal or equitable), of which she was seised in possession, if issue be born alive capable of inheriting.	POWERS AND INCIDENTS. The tenant of this estate has the same powers, and the estate is subject to the same incidents as that of a tenant for life, save that tenant may commit ordinary waste.
4. AN ESTATE IN DOWER arises by operation of law, and is that estate which a woman (married before 1st January, 1834) takes in a third part of all the lands and tenements of which her husband was seised in fee simple or fee tail, in possession at	POWERS AND INCIDENTS. The tenant of this estate has the same powers, and the estate is subject to the same incidents as that of a tenant for life. Widow entitled to remain in husband's mansion forty days, till

(a) Warren's Law Studies, p. 856, 2nd edit.

any time during the coverture, and of which any issue she might have had might by possibility have inherited.

dower assigned — called widow's quarantine.

Dower may be barred by the wife's adultery, by a divorce, by reason of her husband's treason, and by detaining title-deeds. Widow's right enforced by action. Dower may also be prevented by taking a conveyance, subject to dower uses.

As to dower since 1834, *see* 3 & 4 Will. 4, c. 105.

Again, suppose he has been reading the chapter on the law of descents in the same volume, the following might easily be deduced:—

It is a maxim that *nemo est hæres viventis;* therefore, the ancestor must be dead before he can have an heir. Before that time, the person is called either the heir *apparent* (being the person who, should he outlive the ancestor, will be the heir at all events, as the eldest son); or, the heir *presumptive* (he being one who, should the ancestor die immediately, would be his heir, but whose hopes may be cut off by the birth of an heir apparent, as a daughter by the birth of a son). The ancestor must also die intestate, to transmit by heirship.

The law of descents is *founded* on custom, not statute. It dates as far back as the reign of Hen. 2; but had not attained complete maturity till the reign of Hen. 3, or Edw. 1, and underwent no change from that time till partially reconstructed by the stat. 3 & 4 Will. 4, c. 106; and as modified thereby it may be reduced to the following rules or canons:—

I. In every case the descent shall be traced from the *purchaser.*

The purchaser is he who took the lands in any other manner than by *descent.* And by the statute, the last person who had a right to the land, and is not proved to have taken it by descent, &c., is to be deemed a purchaser. This is contrary to the old law.

II. Inheritances shall in the first place lineally descend to the issue of the purchaser *in infinitum.*

III. Males are preferred to females, and an elder male to a younger; but females, when there are several, take together.

IV. The issue of the children of the purchaser *represent* or take the place of their parent *in infinitum,* the children of the same parent being always subject (among each other) to the same law of inheritance as is contained in the third rule.

Thus the child, or grandchild, of the eldest son will take preference over a younger son, *i.e.,* the child's or grandchild's uncle, &c.

V. On failure of the issue of the purchaser, the inheritance shall descend to the nearest lineal ancestor then living, in the preferable line, if *no issue* of a *nearer* ancestor in that line exist.

Under this rule the estate, on failure of issue, will descend to the father, if living; and if he be dead, to *his* issue. Therefore, if B. had two sons, C. and D., and C. acquires property, and dies intestate and without issue, his estate will go to his father B.; but if B. is dead, it goes to *his* issue D., who is also C.'s brother.

This rule is different from the old law, which said that the land should

rather escheat than ascend to an ancestor. The descent of an inheritance was compared to that of a falling body, which, of course, never goes upwards.

As to which is the preferable line, appears by the next rule.

VI. Among the lineal ancestors of the purchaser, the paternal line is preferred to the maternal. That is, the father and all the *male* paternal ancestors of the purchaser and their descendants are admitted before any of the *female* paternal ancestors or their descendants; and all the female *paternal* ancestors and their descendants before the mother or any of the *maternal* ancestors or their descendants; and the mother and all the *male* maternal ancestors and their descendants before any of the female maternal ancestors or their heirs.

It will be observed that the male stock is throughout preferred to the female.

The 8th section of the statute has settled a question which was the subject of much controversy, by enacting that when the male paternal ancestors and their descendants fail, and the female paternal are admitted, the mother of a *more remote* male paternal ancestor and her descendants shall be preferred to the mother of a *less remote* male paternal ancestor or her descendants; and when the male maternal ancestors and their descendants fail, and the female maternal ancestors are admitted, the mother of a more remote male maternal ancestor and her descendants are to be preferred to the mother of a less remote male maternal ancestor and her descendants.

VII. Kinsmen of the whole blood to the purchaser are preferred to those related by the half-blood; but a kinsman of the half-blood is now capable of being heir, and such kinsman inherits next after a kinsman in the same degree of the whole blood, and after the issue of such kinsman, when the common ancestor is a male; and next after the common ancestor when such ancestor is a female.

This rule, like the fifth, is an alteration in the law of inheritance; for as the law stood formerly, the half-blood, like the lineal ancestor, was excluded, and the lands escheated rather than he should take.

VIII. Where there is a total failure of heirs of the purchaser, &c., the descent shall be traced from the person last entitled to the land as if he had been the purchaser.

Miscellaneous points connected with descent.

1. To complete his title the heir must *enter* upon the lands.
2. The lands descended are liable to the debts of the ancestor, as well those by simple contract as by specialty.
3. When a testator (since 1833) devises land to his heir, such person takes as devisee, and not as heir.
4. A man takes by purchase lands limited to the "heirs" or "heirs of the body" of his ancestors, by the conveyance of a stranger, if not falling within the rule in Shelley's case; but the descent to such land is to be traced as if the *ancestor* had been the *purchaser*. Purchaser is to be here taken in its legal sense.

The preceding example embodies the salient points of the chapter (about fifty pages) upon which it is based. Analysing thus tends to reflection, method, and classification, which must, of course, greatly assist the student in the acquirement of knowledge.

Where the clerk contents himself with very brief notes, and the work he is studying is his own, the notes may be made with advantage in the margin of the book.

LAW LECTURES.—Lectures are generally deemed aids to the study of the law; but as they are at present conducted, they are almost, if not entirely, useless. We have asked the opinion of many who have attended lectures, as to the benefit derived from them, and without an exception all have stated that they received little or no advantage from them.

The student sits and hears the lecturer read a paper on a given subject: when the paper is read the student and lecturer part—nothing further is done. The lecturer may, perhaps, state that he will be very glad to answer any questions respecting the subject of the lecture, but if no student is bold enough to put a question, the lecturer departs, and his hearers go away no wiser than they came. The student is pretty attentive at first, but he soon gets tired, as he has nothing to keep up his interest; his attendance becomes less frequent, till at last it ceases altogether, and he votes the whole thing a bore.

Before the student can derive any benefit from law lectures, he must have a fair knowledge of the subject about to be lectured upon; and unless he has, it will be impossible for him to follow the lecturer, let him give what attention he may. Thus, suppose the student has by diligent attention managed to follow the lecturer to a certain point, and he then finds that the lecturer is reading something he no longer understands, he begins to think about the subject, and when he next gives his mind to the lecture, the point upon which he has been pondering no longer engages the lecturer's attention; the thread of the subject is completely lost, and inattention to the rest of the lecture is the result. To remedy this, the reader should give notice to the students upon what subject his lecture is to be, and the books and cases he intends to read and refer to. He should also from time to time examine his hearers, and see that he is properly understood, and explain away their doubts. The student should also read up the subjects of the lecture after as well as before he hears it.

Dr. Johnson thus speaks of lectures: "People have now-a-days got a strange opinion that everything should be taught by lectures. Now, I cannot see that lectures can do so much good as reading the books from which the lectures are taken. I know nothing that can be best taught by lectures, except where *experiments* are to be shown. You may teach chemistry by lectures; you might teach making of shoes by lectures."(*a*) Dr. Parr shows the advantages of a tutor over a lecturer. "The tutor," he observes, "can interrogate, where perhaps the lecturer could only dictate; and, therefore, in his intercourse with learners, he has more opportunities for ascertaining their proficiency, correcting their misapprehensions, and relieving their embarrassments."(*b*) This fully bears out what we have already said—viz., that the lecturer should examine his hearers to see that he is properly understood, and clear up their doubts, if any exist. Again, as Mr. Warren justly observes, "all pupils have not the same abilities and the same acquirements. How, then, can lectures be framed so as to be suitable to all? But in private teaching the tutor can adapt his instruction to the peculiar wants of his pupils; and their attention is kept awake by the consciousness that each is personally addressed."

(*a*) Boswell's Life of Johnson, vol. ii. p. 6.
(*b*) Works, vol. ii. p. 568.

Mr. Joy, in one of his letters on legal education, speaking of the difficulties which now necessarily beset the path of the solitary student, says: "These evils would be in a great degree met by his being obliged to attend lectures delivered, and examinations presided over by those who, by practice in their profession, could experimentally apply and develop the principles of legal science. But to make lectures effectual, not only must a systematic course of reading, to be pointed out by the lecturer, be combined with them, but oral and written examination on the subject of each lecture is essential to make such course of instruction effectual to any considerable degree. The habit of attending a lecture, merely to write down its contents, is worse than useless. It tends to superficial knowledge. To be profound, to be practical, to combine practice with theory, the art with the science of law, a regular course of study, bearing upon the lectures that are delivered, and an earnest and hearty oral examination of the student from day to day, and the sympathy of the lecturer, and a kind and anxious spirit on his part, to encourage and assist the student, and create in him a moral as well as intellectual interest in that which is to engross him in after years, are all essential."

We will take leave of this subject by stating what the Select Committee on Legal Education report upon it. They say, "It is not sufficient that the professor deliver a lecture; lectures without examination, frequent and accurate, without class teaching, without private instruction, fall dead on the majority of hearers; and, however popular in the outset, sooner or later, on the concurrent testimony of some of the most experienced lecturers and lawyers themselves, gradually deteriorate, and finally lose their efficacy and audience. But lectures, class teaching, and private instruction, may each and all be excellent, and yet be productive of no real benefit, unless it be also practicable to insure hearers. Some maintain that this result is sure to follow from the superior and intrinsic merit of the instruction and instructor; that to secure acceptance it is only necessary to render acceptable; while others again reply, that without incentive or obligation of some kind, remote or immediate,(*a*) the highest excellence will not be appreciated, and the most valuable opportunities will be passed by."

The student is, we think, now able to judge for himself as to the expediency of giving the time and the money to attend mere law lectures, and we will, therefore, pass on to consider

Debating Societies.—These societies, if properly conducted, are great aids to the student in the acquirement of knowledge, for the love of victory will spur him on to great exertion; he has a keen interest in the subject before him, and frequently spares no pains or labour to get it well up. They have, however, one drawback; they often cause the student to give too much time and attention to particular points. But if conducted under a president, who is able to sum up the merits of the case *pro* and *con.*, and pronounce a calm judgment, which will have weight with his hearers, this would add greatly to its advantages.

Mr. Warren speaks in favour of debating societies, and has collected the opinions of several old writers on the point, the first of whom is the celebrated Lord Coke; he says: "The next thing to be observed by our student is *conference* about those things which he reads and writes. Reading without hearing is dark and irksome; hearing without reading

(*a*) Articled clerks have this incentive—the examination, honours.

is slippery and uncertain; neither of them yield seasonable fruit without conference." Fulbeck says: "Students will not do amiss, if at certain times they meet among themselves, and to propose such things as they have heard or read, by that means to be assured of the opinion of others in those matters. By this means they may be brought better to understand those things, one, perhaps, seeing and giving a reason which the other is not aware of; and if he misapprehend a point of law, the other may instruct him therein. Hereby are they likewise brought more firmly to retain in memory the things that they have heard or read."

For the like reasons *moot courts* are aids to the student in his course of study.

MUTUAL CORRESPONDENCE.—Some advantage may also be gained by articled clerks joining these societies, as they, like debating societies, tend to produce greater exertion; but they have the same drawback, viz., confining the student's attention too much to individual points, and they are without any other of the advantages attending debating societies. We are afraid they will hardly repay the student if he gives too much attention to them; and, indeed, we have known clerks merely copy their answers out of text-books, without giving the subject more trouble. Such a course of proceeding must necessarily be a mere waste of time.

COPYING PRECEDENTS, &c.—By copying precedents, we mean transcribing various forms of conveyances, and pleadings, from text-books, and from forms which come before the clerk in practice. This system has its advocates and opposers. Mr. Lee thinks "that every hour employed in copying precedents, *elsewhere existing in print*, is an hour *lost*, but which might have been usefully employed in acquiring the principles on which those precedents were originally framed."(*a*) Mr. Warren, although condemning the practice if carried too far, says: "Nothing can be more desirable than for the student to copy out a few *good* precedents, judiciously selected, with due reflection upon what he is doing, and constant reference to the rules and principles upon which they are framed. Three or four precedents a week *thus* copied will be of great service to the student; not only as tending to fix in his mind the rules of law, but to assist him hereafter in the construction of [conveyances] and pleadings in the course of business. He cannot go to greater extent in copying precedents than this, without uselessly encroaching on his valuable time, and degrading himself into a kind of copying clerk."(*b*)

We agree with Mr. Warren. In copying precedents, the articled clerk should make every endeavour to understand their application, and the rules of law by which they are governed; otherwise he will derive no further benefit than does any mere engrossing clerk in the office; and it is well known that a copying clerk, who never reads or studies, remains a copying clerk, a mere machine, to the end of his days. It is often said that the clerk wants the precedents for his own use when he practises for himself. This, however, is a poor excuse, as valuable precedents may now be purchased for a very small sum.

In drawing your drafts it is a good plan to sketch an outline of the work to be done. Thus, suppose you are about to draw a will for (say) Mr. James Smith, the following would greatly assist:

(*a*) Lee's Dict. Pract.
(*b*) Warren's Law Studies, p. 860, 2nd edit.

Testator	James Smith, of 21, Piccadilly, Gentleman.
Household furniture, plate, linen, china, books, &c., &c., and an annuity of 100*l.* per annum, charged upon estate at Croydon, hereafter devised to son William	To wife, she giving up her claim to dower out of estates of inheritance.
£2,000	To daughter Harriet, to be settled to her separate use.
Freehold estate, at Croydon, Surrey	To testator's eldest son William, in fee.
Freehold house, testator now resides in, situated in Piccadilly, also leasehold house, 30, Fleet-street ...	To testator's second son, Henry.

And continue till all specific bequests and devises are made, and then proceed to dispose of residue, &c. :—

Residue...	To sons William and Henry, absolutely (or, as case may be).
Executors	Son William and George Smith, of 29, Russell-square.

This may be done when the testator gives his instructions for his will and it is a good plan to get the testator to sign the outline made, as it will prevent any doubt as to what the testator's instructions really were, or his denying them at any future period. With the above before him, also, the student will set about his work with a clear idea as to what he is going to do. And this plan may be adopted with any other instrument transferring property real or personal.

CHAPTER III.

SUBJECTS AND BOOKS TO BE READ AND STUDIED, ETC.

THE formation of a law library has now become a matter of serious consideration, not only on account of the expense of legal works, but also because of the rapid and incessant changes in the law. In this madcap age of law reform, when every member of each House of Parliament is a professed legal reformer, when law reform is the cry of the day, and change follows change, and Act treads upon Act in such rapid succession, the bewildered student may well wish for some one to point out to him what books are the best for him to study, in order to qualify himself to pass his examination and act as an attorney and solicitor.

SECTION I.

COMMON LAW.

"The common law," says Warren, "was feeble and narrow at first; but expanding with the exigencies of society, and with the progress of knowledge and refinement, it has at length become a remarkably complex and intricate system, presenting a singular combination of the strict principles of the old feudal law, with elegant reasonings of public and commercial jurisprudence, which are so universally admired for their general equity."(*a*)

The meaning of the term "common law" is ambiguous, even amongst lawyers themselves, it being used in several senses; sometimes as contra-distinguished from the statute law, sometimes from the civil and canon laws, and especially from equity.(*b*)

It is, however, termed the "*lex non scripta*," and is generally distinguished as that portion of our laws which has obtained its force by usage or custom; but Lord Hale, in his "History of the Common Law," states that much of what is now termed common law had its origin in Parliamentary enactments, which are not now extant, or, if extant, were made before the time of legal memory, which is before the reign of Richard I.; but this view is doubted by Mr. Hallam in his "Middle Ages." It is also generally applied to that portion of the law which is administered in the Superior Courts of Common Law at Westminster, the first of which is the Court of Queen's Bench.

This court is a court of record, presided over by six judges; one Lord Chief Justice, and five *puisne* judges. The chief justice is created by writ,

(*a*) Warren's Law Studies, p. 398, 2nd edit.
(*b*) See hereon Holth. Law Dict. 2nd edit.

and the five *puisne* judges by patent, and hold their appointment during good behaviour.

There are also other officers of this court, the most important of whom are the "masters." They, like the judges, hold their appointments during good behaviour; and are, with the assistance of the clerks and messengers, to transact all the civil business of the court, excepting that of a judicial character.

The Queen's (or King's) Bench is the remains of the Aula Regis, and for that reason the reigning monarch may still order it to accompany his own person, which privilege Edward I. enforced by commanding it to follow him to Roxburgh, in Scotland, where it sat for some time. But it has for many centuries past, except during the civil wars and the plague, been stationary at Westminster.

The jurisdiction of this court is twofold; having a civil or plea side, and a criminal or crown side. It has a superintending power over all inferior tribunals.

At first the Queen's Bench had no jurisdiction over purely civil causes, yet by a series of fictions it obtained such jurisdiction: for it declared that a person in custody of its marshal was before it for every purpose; and as actions of *trespass* were still considered to be within its jurisdiction, being criminal in their nature, and the defendant liable to pay a fine to the Crown, the plaintiff was permitted to issue a writ, called a bill of Middlesex, charging the defendant with a trespass, which, being then a cause for which a man might be arrested, he was taken and committed to the Marshalsea, and being once there the plaintiff was at liberty to declare against him for any other cause of action. This principle was afterwards carried to a greater extent, it being held that the defendant's appearance, or putting in bail, answered the same purpose; for then, although not in the *real*, he was in the *constructive* custody of the marshal. And on account of this fiction, till a few years ago (2 Will. 4, c. 39), all writs issuing out of the Queen's Bench described the cause of action to be *trespass*, in bailable cases mentioning the real ground afterwards in an *ac etiam* clause, as if it were merely subsidiary to the fictitious one; and every declaration by bill in the Queen's Bench stated the defendant to be in the custody of the marshal of the Marshalsea.

The Court of Common Pleas, sometimes called the Court of Common Bench, is also a court of record, having a similar number of judges and other officers, as the Court of Queen's Bench, and they are appointed in a similar manner.

This court seems to have been first separated or distinguishable from the Aula Regis in the time of Richard I., or perhaps in that of King John, though, according to Mr. Maddox,(*a*) it was not firmly established as an independent tribunal till the reign of Henry III. This opinion may have arisen from the fact that it was directed in Magna Charta that the Common Pleas should thenceforth remain stationary at Westminster, which Act was confirmed by Henry III.(*b*)

The jurisdiction of this court is confined to *civil* matters only. But it has exclusive jurisdiction in the following cases:—Real actions, so far as not abolished by the 3 & 4 Will. 4, c. 27 and the 23 & 24 Vict. c. 126: registration of judgments, and writs of execution under the Acts 1 & 2

(*a*) Hist. Exch.
(*b*) See Broom's Comt. Com. Law, p. 89.

Vict. c. 110; 2 & 3 Vict. c. 11; 3 & 4 Vict. c. 82; 18 Vict. c. 15; 23 & 24 Vict. c. 38; 27 & 28 Vict, c. 112; under the 3 & 4 Will. 4, c. 74, as to the acknowledgment of deeds by married women passing their property; and in appeals from the Revising Barristers' Courts, both parliamentary and municipal.

The Court of Exchequer of Pleas is also presided over by six judges, a Lord Chief Baron, and five *puisne* barons, created by patent, who are assisted by a similar staff of masters and other officers, as the other two courts.

This court seems to have been the first offshoot from the great Aula Regis, and to it all matters relating to the king's revenue were consigned.(*a*) It had at first no other jurisdiction, but, like the Queen's Bench, extended its jurisdiction by a fiction; for the plaintiff in his writ and declaration stated that he was "a debtor to the king," and less able to pay his debts by reason of the defendant's not paying the plaintiff, and the writ was from this cause called the writ of *quo minus;* and this statement, though in ninety-nine cases out of a hundred a mere fiction, was not allowed to be contradicted, and was held to render the cause of action a matter affecting the revenue, so as to invest the Exchequer with a jurisdiction over it. It also by similar means gained an equitable jurisdiction between subject and subject.

Thus did the Queen's Bench and Exchequer of Pleas gain a jurisdiction over civil matters, by means of a fiction. By the Uniformity of Process Act (2 Will. 4, c. 39), however, though this jurisdiction is continued them, the fictitious mode of proceeding is abolished, and now (15 & 16 Vict. c. 76) the three superior courts have a concurrent jurisdiction in personal actions, which is in all cases commenced by writ of summons. The equitable jurisdiction of the Court of Exchequer was taken away by the 5 Vict. c. 6, and transferred to the Court of Chancery.

The judges sit in *banc* or *banco*, that is, on the bench of their respective courts at Westminster, during term, to try matters of law, hear applications for new trials, and decide other judicial business. The 1 Will. 4, c. 70, s. 1, enacts that three *puisne* judges only shall sit in *banc*, except during the absence of the chief; but a single judge of each court is empowered to sit in *banc*, apart from the rest, for the purpose of qualifying bail and deciding matters of practice.

The Courts of *Nisi Prius* are such as are held for the trial of issues of fact before a jury and presiding judge; or by consent of the parties and leave of the court before a single judge without jury.(*b*) The origin and history of these courts may be thus shortly stated. There was a sort of real action called an *assize*, which was tried in the very county in which the land in question lay, by judges holding the king's commission for that purpose, and who were styled *justices of assize*. These justices of assize came into use in the room of the ancient justices in eyre, *justiciarii in itinere;* who seem to have been established by Henry 2, being delegated from the Aula Regis, and looked upon as members thereof; and they made their circuit round the kingdom once in seven years, for the purpose of trying causes; afterwards, by Magna Charta, they were ordered to go once a year. But the present justices of assize consist of the judges of the superior courts of common law, and are more immediately derived from the stat. 13 Edw. 1, c. 30; they usually make their respective circuits in

(*a*) Broom's Comt. Com. Law, p. 28.
(*b*) 17 & 18 Vict. c. 125, s. 1.

the vacations after Hilary and Trinity Terms. By the above statute, usually termed the Statute of *Nisi Prius*, it was enacted that these justices of assize should try other issues, return the verdicts into the court above, and in order to enable them to do so, the old writ of *venire* (now abolished) was altered, and instead of ordering the sheriff to return the jurors to the *court at Westminster*, he was ordered to bring them to Westminster on a certain day, *nisi prius, i.e.*, unless before that day the justices of assize came into the county; for then the statute rendered it his duty to return the jury, not to the court, but before the justices of assize. Hence it is that judges are said to sit at *nisi prius*, and trials to take place at the *assizes;* though the real actions of assize long ago became obsolete, and are now altogether abolished by stat. 3 & 4 Will. 4, c. 27.

The Exchequer Chamber is the court of error or appeal from the decision of any of the three Superior Courts at Westminster. By stat. 1 Will. 4, c. 70, error upon any judgment of the Queen's Bench, Common Pleas, or Exchequer, can be brought only before the judges or judges and barons, as the case may be, of the other two courts, in the Exchequer Chamber, and whence error again lies to the House of Lords, whose decision is final.

The rules and practice in these three courts are now the same; and, as before stated, they have concurrent jurisdiction in all personal actions. The principal proceedings in an action are the following:—A writ of summons is issued, and a copy thereof served personally upon the defendant; if, however, the defendant cannot be personally served, the writ must be brought to his knowledge, and upon an affidavit of the facts, leave will be given by a judge at chambers, to proceed as if personal service had been effected. After the defendant is served, he has eight days from the day of service to appear; and when he does so, it is usual, but not necessary, to give notice of the fact to the attorney for the plaintiff. When the defendant has appeared the pleadings commence; the plaintiff's attorney delivers to the other side a declaration, the principal parts of which are the title, the venue (the county in which the action will be tried), the body, containing the cause of action, and the conclusion, stating the redress sought. And if the declaration contains any of the counts in *indebitatus assumpsit*, unless the writ is specially indorsed, such declaration must be accompanied by full particulars of his demand as to these counts, contained within three folios.

The next step is the *plea*, which is the defendant's answer of some matter of *fact* to the declaration; or instead of pleading the defendant may *demur*, which has the effect of denying the sufficiency, in point of *law*, of the plaintiff's case. If the defendant does not plead, he may be compelled to do so by giving him notice to plead in eight days, otherwise judgment. But this notice is commonly given with the declaration.

The subsequent steps in pleading are the *replication*, containing the plaintiff's answer to the plea; the *rejoinder*, the defendant's answer to the replication; the *surrejoinder*, the *rebutter*, the *surrebutter*, and so on. The pleadings seldom reach to surrebutter, but they sometimes do, and there is nothing to prevent their going beyond it. But the steps after surrebutter have no distinctive names.(*a*)

Thus the pleadings go on step by step, till the parties come to a direct contradiction, which if it be one of fact, is called an *issue;* if of law, a *demurrer*.

The plaintiff should then make up the *issue*, which is nothing more

(*a*) See Smith's Action at Law.

than a transcript of the pleadings from beginning to end, concluding with the words "therefore let a jury come," &c. When made up it is indorsed with a notice of trial, and delivered to the opposite side. Ten days are full notice, and four days short notice, of trial.

The *nisi prius* record must then be made up, which is a history of the suit up to trial, and a printed panel of the jurors, as also particulars of demand, and set-off (if any), must be annexed to it. This is for the use of the judge at the trial. When the time of trial arrives, the *nisi prius* record must be carried down to the sittings or assize town, and the cause entered, otherwise it cannot be tried.

The briefs are also prepared, which contain a statement of the pleadings, case, and evidence, and delivered to counsel, and consultations appointed and attended; the witnesses are at the proper time served with subpœnas to attend the trial for the purpose of giving evidence; and notices to inspect and admit, and produce documents, are also given.

When the time of trial comes the jury are sworn, and the cause tried in due course, and a verdict given or plaintiff nonsuited, and a minute of that fact is indorsed on the back of the *nisi prius* record by the judge's associate. From this minute the *postea* is afterwards drawn up, which is a formal statement indorsed on the *nisi prius* record of the proceedings at the trial. It is called *postea* because it commences with the word "Afterwards," and then proceeds to state the coming of the parties before the judge, the swearing of the jury, and the verdict.

If the verdict be not molested in any manner, the next step is to sign judgment. Judgments are either interlocutory or final. If necessary this judgment may be enforced by execution. The ordinary writs of execution are *fieri facias*, whereby the debtor's goods and chattels are taken; and *elegit* whereby his goods and chattels, lands and tenements, &c., may be taken.

We have now stated the ordinary steps in an action when the cause tried is one of fact, but there are generally many other interlocutory applications occurring in the course of a suit, such as applications for further time to plead, for delivery of particulars of demand or set-off, to change the venue, &c., and these applications are made to a judge at chambers on summons. There may be also motions for a new trial, in arrest of judgment, or for judgment *non obstante veredicto*, or the like, which are made to the court on motion.

If the issue be one of law raised by *demurrer*, a demurrer book must be made up, which is a transcript of such part of the pleadings as relates to the dispute in point of *law* only. The demurrer is then set down in the *special paper* in the court in which the action is brought. When the demurrer has been set down for argument in the special paper, notice must be given to the other side, and four clear days before the day for argument the plaintiff must deliver copies of the demurrer book to the Lord Chief Justice or Lord Chief Baron and the senior puisne judge or baron, and the defendant to two other judges, and in case of either party neglecting to do this the other side may do so the next day; and the party in default cannot be heard till he has paid for the copies so delivered by his adversary. A statement of points is exchanged between the parties. When these preliminaries have been arranged, the cause is called on and argued before the court, and judgment is pronounced; only one counsel can be heard, however, on each side.

The most usual causes of actions are the following:—1. For detention of debt. 2. For a trespass, which may be either to a man's person, or his

goods, or his lands. 3. For a conversion of goods. 4. For a libel or slander. 5. For fraudulent misrepresentation. 6. For an injury to a party's incorporeal rights. 7. For an excessive or wrongful distress. 8. For use and occupation. 9. For false imprisonment. 10. For a private nuisance or a public one, from which a particular injury has arisen to the party.

BOOKS TO BE READ.—As we have before stated, principles should always precede practice, therefore, the student must first turn his attention to works which treat of the principles of the law.

And first we propose giving a list of works to be read by students who merely wish to pass the examination, and seek not "honours." As a commencement, he cannot do better than read so much of the second volume of Stephen's Commentaries as relates to Contracts; then, if he has not already possessed himself of Chitty on Contracts, and partly read that work for his Intermediate Examination, we strongly advise him to read Smith's Law of Contracts, the late editions of which are edited by Mr. Malcolm, and the price is only 16*s.*; it contains a course of lectures delivered by the late Mr. Smith at the Law Institution. Or in substitution for this work the articled clerk may read in the same author's Compendium of Mercantile Law, the whole of book 1; ch. 4 in book 2; chs. 1, 2, 8 and 10 to 13 inclusive in book 3; and chs. 1 and 2 in book 4. Should, however, the student have read certain chapters of Chitty on Contracts, he may continue that work to completion, which, when done, we need hardly say will be sufficient on the Law of Contracts. One of the above courses being finished he must turn his attention to practice. The best work is Smith's Action at Law, the late editions of which are by Mr. Prentice, and the tenth edition contains an additional chapter on "Actions against Particular Persons." The rules of pleading will be found in the Appendix of this work, and should be carefully read. For reference and occasional reading the student should possess himself of an edition of the Common Law Procedure Acts. The one by Mr. Markham is the cheapest, the one by Mr. Day the most elaborate; both, however, are good. Smith's Action being carefully mastered, the following statutes should be read:—the 17 & 18 Vict. c. 36 (Bills of Sale Act); the 18 & 19 Vict. c. 67 (The Bills of Exchange Act); the 19 & 20 Vict. c. 97 (The Mercantile Law Amendment Act); the 23 & 24 Vict. c. 126 (Procedure Act, 1860); the 23 & 24 Vict. c. 41 (The Innkeepers Act); the 26 & 27 Vict. c. 105 (The Act to Remove Restrictions on Bills and Notes); the 27 & 28 Vict. c. 95 (Accidents Compensation Act Amendment); the 28 & 29 Vict. c. 45 (The Partnership Law Amendment Act); the 28 & 29 Vict. c. 94 (The Carriers Law Amendment Act); the 29 & 30 Vict. c. 96 (Bills of Sale Amendment Act); the 30 & 31 Vict. c. 142 (The County Courts Act, 1867); the 32 & 33 Vict. c. 46 (Debts of Deceased Persons Act); the 32 & 33 Vict. c. 62 (The Debtors Act); the 32 & 33 Vict. c. 68 (The Evidence Amendment Act); the 33 & 34 Vict. c. 35 (The Apportionment Act, 1870); the 33 & 34 Vict. c. 93 (The Married Womens Property Act); the 34 & 35 Vict. c. 74 (Bills of Exchange Act, 1871); and the 34 & 35 Vict. c. 79 (Lodgers Goods Protection Act). The reader may now take up the common law branch of Hallilay's Digest of the Examination Questions and Answers and make the substance of the answers his own. This done, the candidate may fairly expect to answer the common law paper at the examination creditably.

Should, however, the candidate wish to obtain honours, we advise the

following further course of study in this branch:—Having read some minor work on Contracts, the student should then carefully study Chitty on Contracts, after which he should proceed to Smith's Leading Cases on various Branches of the Law; then works in particular branches of the law should be read. On Evidence, Mr. Powell's is a suitable one, the third edition of which is published by Messrs. Butterworths, price 16*s*. On Landlord and Tenant, Smith's is the most readable book; the second edition is by Maude, price 16*s*., published by Maxwell. On Bills and Notes, if the student does not like to face Byles, he will find in Smith's Handy Book on Bills and Notes, and in the chapter devoted to this branch in Smith's Mercantile Law, a large amount of information. On Practice, if more is wished for than is contained in so much of the third volume of Stephen's Commentaries as relates to Civil Injuries, and the tenth edition of Smith's Action at Law, the Common Law Procedure Acts, and the practice and pleading rules engrafted on them, we advise Lush's Practice to be read as decidedly the most suitable; the third edition being edited by Mr. Dixon in a most able manner; it has the advantage, too, of being very lately published, by Messrs. Butterworths; the price is 2*l*. 6*s*. In addition to the statutes directed to be read for a "pass," the student for honours should read the following:—the 4 Ann. c. 16, s. 19; the 21 Jac. 1, c. 16; the 3 & 4 Will. 4, c. 42 (Limitations of Actions); the 9 Geo. 4, c. 14 (Lord Tenterden's Act); 5 & 6 Will. 4, c. 41; and 8 & 9 Vict. c. 109 (Gaming, &c.); the 9 & 10 Vict. c. 95; the 13 & 14 Vict. c. 61; and the 19 & 20 Vict. c. 108 (County Courts Acts); the 18 & 19 Vict. c. 111 (Bills of Lading); the 6 & 7 Vict. c. 85; the 14 & 15 Vict. c. 99; and the 16 & 17 Vict. c. 83 (Evidence Acts); the 23 & 24 Vict. c. 127 (Attorneys and Solicitors); the 24 & 25 Vict. c. 62, and 28 & 29 Vict. c. 104 (Crown Suits); the 25 & 26 Vict. c. 88 (Merchandise Marks Act); the 33 Vict. c. 14 (Naturalization Act); and the 33 & 34 Vict. c. 28 (Attorneys and Solicitors Act.)

SECTION II.

CONVEYANCING.

This branch of English jurisprudence, observes Mr. Serjeant Stephen, involves considerations of a very complex and subtle kind, and has been elaborated into a highly artificial system.(*a*)

The laws of real property, it is said, are founded on the feudal system.

This system appears to have been received in England in the reign of William the Conqueror, about which time the great survey, called Domesday Book, was made, and from thenceforth all the principal landholders submitted their lands to the yoke of the military tenure, became the king's vassals, and did homage and fealty to his person. Thus tenures were changed from *allodium* (holden of no one) to *feodum* (held of a superior).

These tenures were subject to *feuds*, of which there became, in course of time, two sorts, proper and improper; *aids*, of which there were three kinds; *reliefs*, *wardships*, and other burdensome exactions, which in their inception were uncertain and at the will of the lord, but became more fixed and less arbitrary by several statutory enactments.

The various kinds of tenures formerly existing seem to have been the

(*a*) Stephen's Commentaries, vol. i.

following:—Knight's service, which was the most honourable, but was commuted into a money payment, called escuage, before it was abolished; free socage (freehold), which, though not so honourable, was more certain than the former; and villenage, of which latter there appears to have been two sorts, certain and uncertain, *i. e.*, the services rendered in the one case were more certain than in the other: from this tenure of villenage, which was of the basest and most uncertain kind, we are said to derive our copyholds. There were also tenures by cornage (to wind a horn, &c.), by grand serjeanty, and petty serjeanty. Borough English, and gavelkind lands are not, and never were, distinct species of *tenure*, but are socage tenure, only by custom the lands descend to the youngest son in the first case, and to all the sons equally in the latter.

These tenures, with their burdensome accompaniments, continued to exist till the reign of Charles 2, when they were, by stat. 12 Car. 2, c. 24, all converted into free and common socage; the tenure of villenage was also preserved under the name of copyholds, in which are included customary freeholds, and lands held in ancient demesne. The tenure of grand serjeanty was (without its burdens and exactions) also retained; and *reliefs* were also preserved.

There is, however, another species of tenure in existence, and occasionally may be met with, viz., the *ecclesiastical* tenure of frankalmoign.

It is a fundamental principle of the laws of England, either derived from the system of feuds, or at least in accordance with it, that all land is supposed to be held, either mediately or immediately of the king, who is styled the lord paramount. Thus, if the king granted lands to B., and B. granted part of them to C., C. held of B., and B. of the king; B. being the mesne lord and tenant in *capite* to the king, and C. the tenant paravail. By the stat. *Quia Emptores* (18 Edw. 1), however, it was provided that after the passing of this Act all feoffments in *fee simple* should be so made that the feoffee should hold of the chief lord, by such services as his feoffor held. Therefore after the passing of this Act, when lands in fee simple are conveyed, the purchaser holds them not of *his* feoffor as before the Act, but of the chief lord, who was such at the time the Act passed.

The estate or interest which a man may have in freeholds is either an estate of inheritance, or an estate not of inheritance.

Under the former are classed:—1, An estate in fee simple, for brevity styled in fee, as where lands are given to a man and *his heirs*, generally, without any restrictive words. 2. An estate tail, which arises on a gift to a man and the heirs of *his body;* and out of this estate a *base fee* is sometimes created. An estate in fee tail may be either *general*, as in the example just given, or *special*, as where the heirs are to be begotten on the body of a particular wife; they may be also in tail male or tail female.

Of estates of freehold not of inheritance, there are:—1. Estates for life, which includes an estate *pur autre vie*, as where an estate is given to one to continue during the life of another. 2. An estate which a man holds as tenant in tail after possibility of issue extinct, which can only arise on the gift of an estate in special tail, and the wife from whose body the issue was to come is dead. 3. An estate in dower. 4. An estate by the curtesy of England. We have already given some explanation and the incidents of these estates, *ante* p. 18, to which the student is referred.

Estates less than freeholds are:—1. Estates for years. 2. Estates at will. 3. Estates at sufferance.

As to copyholds, as before shown, they are derived from the old tenure

of *villenage;* these are not freeholds, but estates held by *copy of court roll at the will* of the lord of the manor, of which they form parcel. Being thus held at the will of the lord, and the services being formerly so base and uncertain, they were not deemed worthy the gift of a freeman; but although still held at the will of the lord, it is such a will as is conformable to the customs of the manor. The freehold and seisin of these estates are in the lord.

Customary freeholds are estates held according to the custom of the manor, but not at the will of the lord.

Lands held in ancient demesne, were lands which, at the time of Edward the Confessor and William the Conqueror, were in the hands of the Crown, although afterwards granted out to private individuals.

Both these species of tenures are now included in the wider appellation of copyholds.

The estate or interest the person claims in these different kinds of property may be in possession, reversion, or in remainder. The difference between the two latter being that a reversion is the remnant of an estate left in the grantor after a particular estate is granted out by him; as if A. be tenant in fee, and grants an estate to B. for life, B. will be the particular tenant, and the estate or interest remaining in A. will be a reversion. A remainder is an ulterior estate granted to some person to take effect after the determination of some particular estate, both estates being created at the same time; as if A., being tenant in fee, grants an estate to B. for life, remainder to C. in fee, here C. has an estate in remainder.

Remainders are of two kinds, vested and contingent. The example just given shows a vested remainder. A contingent remainder is where the ulterior estate is limited either to an uncertain person or upon an uncertain event.

The owner's estate may be either *legal* or *equitable*. The former gives him the right to possession and ownership at law; the latter gives him the beneficial ownership in equity, but is not for most purposes noticed at law. Therefore, if A. have the legal estate, and B. the equitable, law gives A. the possession and ownership, but equity compels him to exercise such possession for the benefit of B.

Of the Alienation of Real Estates.—Prior to the reign of Henry VIII. an estate in fee simple was usually transferred from one person to another by the delivery of some symbol of possession (as a turf or wand), upon the land, attended with apt words. This mode of conveyancing was called a *feoffment*. It was by the Statute of Frauds (29 Car. 2, c. 3) required to be put into writing,(*a*) the livery of seisin being still necessary, of which there are two kinds, namely, a livery in *deed*, and a livery in *law*. The effect of a feoffment was always to convey some estate of *freehold*.

This mode of conveyance was used for transferring estates of freehold (except estates tail and dower, of which more hereafter) till the reign of Henry VIII., and, as before stated, in that reign a new mode of conveyance was discovered, by means of the Statute of Uses: (27 Hen. 8, c. 10.)

Before this time the Courts of Chancery had begun to exercise jurisdiction over land, and to compel the enforcement of *trusts*, and had formed themselves into a regular system relating to equitable estates. Thus, if a feoffment were made to A. and his heirs *to the use of* B. and his heirs, equity compelled A. to hold the legal estate for B.'s benefit, whom they

(*a*) The 8 & 9 Vict. c. 106, s. 3, now requires a feoffment to be by deed.

considered the real owner. So if A. had agreed with B. to sell, and B. to purchase A.'s land, and B. paid the price, equity made A. hold the land *to the use of* B., as in the last case.

This doctrine of uses was introduced by the monks in order to evade the Statutes of Mortmain, for although uses were recognised in equity, at *law* they were considered a nonentity. By a statute of Ric. 2, however, uses were declared to be within the Statutes of Mortmain. In course of time great evils resulted from this separation of the real and ostensible ownership, and so great was this felt that the Legislature was called in to put a stop to it, and the 27 Hen. 8, c. 10, accordingly enacts, that where any person or persons stand *seised* of any lands, &c., *to the use*, &c., of any other person or persons, &c., such person or persons that have such use, &c., shall thenceforth stand and be seised in lawful seisin and possession of and in the same land, &c., to all intent and purposes in the law, and in such estates as they had or shall have in the use, &c. Thus does the statute turn the use into an estate in possession.

By means of this statute a man could get the legal and equitable interest in real property without any livery of seisin or formality of any kind, and without a deed; for, as before stated, if one agreed to sell, and another to purchase, and the price was paid, the seller stood seised to the use of the buyer, and this use the Statute of Uses turned into an estate in possession, which mode of conveyance was termed a *bargain and sale*. This was felt to be an evil, the stat. 27 Hen. 8, c. 16 (called the Statute of Enrolment), therefore enacted that all bargains and sales of *freeholds* should be by deed, and enrolled within six months after execution. But this Act does not require a bargain and sale of *leaseholds* to be enrolled. Therefore, our ancestors, by means of the Statute of Uses, found out a mode of conveyance without the necessity of an actual entry, and without enrolment. The mode was thus: the lands were bargained and sold to the use of the purchaser for a year, the Statute of Uses turned the use into an estate in possession without the necessity of entry, and being only a chattel interest, it did not require enrolment. The purchaser being now in possession, was in a position to receive a release of the reversion and freehold (for *incorporeal* hereditaments were always said to lie in *grant*, and were conveyed by deed), which was accordingly done by another deed, and these two instruments were called a *lease and release*, forming, in point of fact, but one deed, and was the mode in general use for conveying real property till the year 1841. In that year the 4 & 5 Vict. c. 21, enacted that any deed of release, if purporting to be made *in pursuance of the Act*, should be as effectual for the conveyance of freehold estates as a lease and release by the same parties.

By a still later Act (8 & 9 Vict. c. 106) it is declared that all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in *grant* as well as in livery. So that freeholds may now be conveyed by deed of grant only.

And by the 25 & 26 Vict. c. 53 (Land Transfer Act) freeholds and certain leaseholds of freeholds may be registered, and an indefeasible title obtained, in which case they may be conveyed or dealt with: (1) by a statutory disposition in the forms prescribed by this Act; (2) by indorsement on the land certificate; (3) by any deed or instrument by which such lands if *not* registered might be conveyed or dealt with.

Copyholds are transferred *inter vivos*, by surrender and admittance, accompanied by a deed of covenants.

The mode of barring estates tail and dower, and conveying the interests

of married women in lands, was formerly by fine or recovery. Fines and recoveries were in their nature fictitious actions, the former of which were always compromised, and were thus called fines, because they put an end to all suits and controversies; the latter, however, were carried through all stages to judgment and execution.(a) They were always accompanied by deeds either leading or declaring their uses.

Fines and recoveries are now abolished, and a simple deed enrolled in Chancery is substituted as well for a fine as a recovery by the stat. 3 & 4 Will. 4, c. 74.

An estate tail in copyholds is barred by surrender; if, however, the estate is in equity only, it may be barred either by surrender or deed.

Of Alienation by Will.—Before the Norman Conquest both real and personal estate were devisable by will. When, however, the Normans had established their feudal tenures, they would not allow *lands* to be devised by will, and this restraint continued till the reign of Henry VIII. In this reign the stat. 32 Hen. 8, c. 1, was passed (explained by 34 Hen. 8, c. 5), called the Statute of Wills, which enabled all persons, except infants, *feme coverts*, idiots, and persons *non compos mentis*, to devise *two-thirds* of their lands held in knight's service and the whole of those held in socage; and as the stat. 14 Car. 2, c. 24, abolished the military tenures, &c., this power was as a natural consequence extended to all freehold estates in fee simple.

Previously, however, to either of these enactments, and before the Statute of Uses, a *use* in lands might have been devised by will, and this devise equity would have enforced.

The only form required by the statute of Hen. 8 was writing. The next statutory enactment respecting wills was the 29 Car. 2, c. 3 (Statute of Frauds), which required all wills of lands to be in writing, signed by the testator, or some other person in his presence, and by his direction, which will was to be attested by *three* or more credible witnesses, in the presence of the testator. Publication was also required.

A person had always the power of disposing of his personal estate by will, and previous to the Statute of Frauds no formality whatever was requisite. By this statute, however, it was declared that no parol or nuncupative will should be good where the estate bequeathed exceeded the value of 30*l.*, but still anything in writing was sufficient, no attestation or other formality being necessary.

Thus the law stood at the time of the passing of the 7 Will. 4 & 1 Vict, c. 26, which gave the fullest powers of testamentary disposition, enabling testators (except persons under twenty-one, *feme coverts*, and those *non compos mentis*) to dispose of every species of property to which they are entitled at their death.

The same formalities are required as to wills passing real or personal estate; that is, the will must be signed at the foot or end by the testator, or by some other person in his presence, and by his direction; and he must either make, or acknowledge such signature to be his, in the presence of *two* or more witnesses present at the same time, who must attest and subscribe the will in the presence of the testator; but no form of attestation is necessary. The words "at the foot or end" caused many wills to be rendered void on account of their not been signed strictly at the foot or

(a) For further information, see 1 Steph. Com.; Will. Real Property; Burton's Comp.

end. The stat. 15 & 16 Vict. c. 24, was, therefore, passed, which gives a far more liberal construction to the signature, but declares that no will shall be good if the signature precede the will.

BOOKS TO BE READ.—Principles in this branch of the law should essentially precede practice. For students who wish to secure a "pass" we advise the following text-books:

As a first book, Williams on the Law of Real Property, or the first volume of Stephen's Commentaries, is the best; indeed, both should be read. If the candidate will, however, only read one of these works, we advise the former, unless he has thoroughly mastered it for the purpose of passing his Intermediate Examination, for then we recommend his attention to the latter. After either or both of these works have been read, the student may pass to Barry's Practice of Conveyancing, which will be found useful not only for the examination but also for the office afterwards. Lord St. Leonard's Handy Book on Property Law, and Lewis on Conveyancing, may be substituted for Mr. Barry's work if thought fit, but we advise Mr. Barry's book, as Mr. Lewis's work is confined chiefly to the law and practice of deeds and their requisites; it is, however, a most useful work for a young solicitor. Both this and Mr. Barry's work are published by Messrs. Butterworths, the price of each being 18*s*. These works being well mastered, the student should read the following statutes:—3 & 4 Will. 4, c. 104 (Debts Act), c. 105 (Dower), c. 106 (Descents); 1 Vict. c. 26 (Wills Act Amendment); the 1 & 2 Vict. c. 110, ss. 13, 18, and 19; the 2 & 3 Vict. c. 11; the 3 & 4 Vict. c. 82, s. 2; the 18 & 19 Vict. c. 15; the 23 & 24 Vict. c. 38, ss. 1 to 3; and the 27 & 28 Vict. c. 112 (all Acts relating to Registration of Judgments); the 8 & 9 Vict. c. 106 (Real Property Amendment Act); the 20 & 21 Vict. c. 57 (Reversionary Interests of Married Women); the 22 & 23 Vict. c. 35; the 23 & 24 Vict. c. 38 (Property Law Amendment Acts); and 23 & 24 Vict. c. 145 (Trustees and Mortgagees Act, 1860); the Leases and Sales of Settled Estates Act; the Succession Duties Act; the 30 & 31 Vict. c. 48 (the Sale of Land by Auction Act); the 31 Vict. c. 143 (Sale of Reversions Act); the 31 & 32 Vict. c. 44 (Partition Act); the 33 & 34 Vict. c. 35 (Apportionment Act); and 33 & 34 Vict. c. 93 (Married Women's Property Act), should be read. After this, the student may with safety and advantage read the Conveyancing Questions and Answers in Hallilay's Digest of the Examination Questions and Answers. This accomplished, especially if the student has any practical knowledge, he will pass the examination in this branch.

The student seeking honours must, after Williams on Real and Personal Property respectively, and the first volume of Stephen's Commentaries have been read, take up either Burton's Compendium or Smith's Compendium of Conveyancing. Mr. Smith's work is the latest and most readable, as all the new law in Mr. Burton's work is given in notes to the text. After both or either of these, Tudor's Leading Cases in Conveyancing may follow, and then either Sugden or Dart's Vendors and Purchasers must be read. On the Law of Wills, &c. the student cannot do better than study the notes to Hayes and Jarman's Concise Forms of Wills, which contains much and valuable information on this branch of the law. The late editions are by Mr. Eastwood, published at 1*l*. 1*s*. If more information is wanted on the Law of Powers than has been obtained from the works already studied, and the leading case of *Edwards* v. *Slater*, in Tudor's Leading Cases in Conveyancing, the student

must have recourse to Sugden on Powers; but we think this work may be dispensed with even by candidates seeking honours. After this, the following additional statutes should be read:—the 27 Hen. 8, c. 10 (Statute of Uses); the 13 Eliz. c. 5, and 27 Eliz. c. 4 (Voluntary Conveyances); the 29 Car. 2, c. 3 (Statute of Frauds); 9 Geo. 2. c. 36 (Charities); 39 & 40 Geo. 3 (Accumulations); 2 & 3 Will. 4, c. 71 (Prescription Act); 3 & 4 Will. 4, c. 27, and 1 Vict. c. 28 (Limitations); 3 & 4 Will. 4, c. 74 (Fines and Recoveries); 4 & 5 Will. 4, c. 22 (Apportionment); 6 & 7 Will. 4, c. 71, and amendment Acts (Tithes); 4 & 5 Vict. c. 21 (Abolishing Lease for Year); the 4 & 5 Vict. c. 35 (Copyholds); 8 & 9 Vict. c. 18 (Lands Clauses Consolidation Act), c. 56 (Draining), c. 112 (Satisfied Terms); the 14 & 15 Vict. 25 (Emblements); the 15 & 16 Vict. c. 51; and 21 & 22 Vict. c. 94 (Enfranchisement of Copyholds); the 18 & 19 Vict. c. 43 (Infants' Settlements); 20 & 21 Vict. c. 115, s. 2 (Satisfying Judgments); 24 Vict. c. 9; and the 25 Vict. c. 77 (Charities); the 25 & 26 Vict. c. 53 (Land Registration Act), c. 108 (Sale of Minerals, &c.); the 33 Vict. c. 14 (Naturalization); the 32 & 33 Vict. c. 46 (Specialty and Simple Contract Debts.)

SECTION III.

EQUITY.

The origin of equity is involved in some obscurity, and there are conflicting opinions upon the subject.(*a*) Mr. Stephen, in his Commentaries, gives the following history: "The origin of equity may be stated as follows. The ancient structure of our national jurisprudence (whatever might be its merits in other particulars) was singularly defective in compass and enlargement of view. It took no account of several subjects for which it is the duty of civilised judicature to provide, and to others it applied maxims too strict and unbending to satisfy the notions of justice in an advanced state of society. Its judicial remedies were also in some cases of a cumbrous and inconvenient character. For these evils the progressive introduction of new remedial laws by act of the Legislature would seem to have been the natural remedy: but the course of things was different. Owing perhaps to some peculiar aversions in the early genius of the country from change in its legal institutions, the law administered between subject and subject in the ancient courts of the realm was allowed to remain for a long period of our history with very little alteration of a fundamental kind. But new courts were, on the other hand, gradually established with a collateral, and, in some sense, an usurped jurisdiction, in which cognisance was taken of those subjects which the proper law of England had overlooked or insufficiently regulated, relief given from the consequences of some of its harsher doctrines, and the defects of its judicial methods in certain cases supplied. These courts, having been at the outset chiefly resorted to for one of the particular purposes above enumerated, viz., the mitigation of the severity of the common law,(*b*) as applied to particular cases, the whole system and rules as there administered obtained (without much propriety, but in reference to the liberal principle of interpretation applied by jurists to the interpretation of positive laws) the appellation of *equity*, and soon began

(*a*) See Story's Eq. Jur. c. 2, and authorities there referred to.
(*b*) Bacon says, "Chancery is ordained to supply the law, not to subvert the law."

to hold that divided empire with the more ancient or common law which it still retains."(*a*)

Equity is defined to be a portion of justice or natural equity, not embodied in legislative enactments, or in the rules of the common law, yet modified with a due regard thereto, and administered where courts of law cannot, or originally did not, clearly afford any relief, or at all events adequate relief, at least not without circuity of action or multiplicity of suits, or where they cannot direct such restrictions, adjustments, compensations or conditions as may be necessary, in order to take a due care of the rights of all who are interested in the property in litigation.(*b*)

The learned Selden said: "For law we have a measure, and know what to trust to. Equity is according to the conscience of him that is Chancellor, and as that is large or narrow so is equity." But however true this opinion may have been when uttered, it is not now a true description of equity, "for there are certain principles upon which courts of equity act which are well settled. The cases which occur are various, but they are decided on fixed principles. Courts of equity have in this respect no more discretionary power than courts of law. They decide new cases as they arise by the principles on which former cases have been decided, and may thus illustrate or enlarge the operation of those principles, but the principles are as fixed and certain as the principles on which the courts of common law proceed."(*c*)

The essential difference between law and equity consists in the subjects over which they exercise jurisdiction, the kind of relief they administer, and in their mode of proceeding.

The principal heads of equity jurisprudence are—accident, mistake, frauds, uses and trusts, administration, specific performance of agreements, injunctions, election, discovery, perpetuating the testimony of witnesses when there is no actual litigation, &c.

It has still *exclusive* jurisdiction over the following matters:—in decreeing specific performance of private matters not comprising a public duty;(*d*) in matters relating to uses and trusts; in the guardianship of infants, lunatics, and persons under disability; in enforcing a mortgagor's right of redemption, or a mortgagee's right of foreclosure and partition.

It has concurrent jurisdiction with law in enforcing the specific delivery up of chattels; also, in granting injunctions; enforcing the specific performance of agreements comprising a public duty, and in some cases of forfeiture and fraud;(*e*) set-off; administration, &c.

It has an auxiliary jurisdiction to a court of law in discovery, perpetuating testimony, and bills to establish wills.(*f*)

The courts of equity are the High Court of Chancery, of which the Lord Chancellor is the head. The different branches of the courts are:—the Court of the Master of the Rolls; the Court of Appeal, presided over by the Lords Justices, either with or without the Lord Chancellor, together or singly; and the courts of the three Vice-Chancellors.

There are also courts of equity in the Counties Palatine, in the two universities, and in the City of London, but their jurisdiction is limited.

(*a*) Introductory Chapter.
(*b*) See Smith's Manual of Equity.
(*c*) Per Lord Redesdale, in *Bond* v. *Hopkins*.
(*d*) See *Benson* v. *Paul*, 27 L. T. Rep. 78.
(*e*) See 17 & 18 Vict. c. 125; 23 & 24 Vict. c. 126.
(*f*) See Hayne's Tab. Anal. Eq. It is by no means easy to state with correctness what does form the exclusive, the concurrent, and the auxiliary jurisdiction of equity. In our arrangement we have followed that of the text writers.

An appeal lies from the Vice-Chancellors and Master of the Rolls to the Lords Justices, and from them to the House of Lords, or direct from the Vice-Chancellors or Master of the Rolls to the House of Lords, if their decrees be first signed by the Lord Chancellor and then enrolled; from the Lord Chancellor an appeal only lies to the House of Lords. The decision of the House of Lords is final.

The mode of instituting proceedings in the Court of Chancery seems in its inception to have been by petition. Proceedings may now be commenced:—

1. By bill.
2. By information.
3. By special case.
4. By petition.
5. By summons before a judge at chambers.

A suit is usually commenced by bill. A bill of complaint is in the nature of a petition to the Lord Chancellor or Lords Commissioners for the custody of the Great Seal, or to the Queen (or King) herself in the Court of Chancery, in case the person holding the seal is a party, or the seal is in the Queen's hands. The party preferring the bill is styled the complainant or plaintiff, and the party against whom the suit is instituted, the defendant.

A bill consists of, first, the title of the court and cause; secondly, the address; thirdly, the body of the bill, setting forth the facts and allegations; and lastly, the prayer. It must be signed by counsel, and the name of the solicitor, and agent, if there be one, must be added at the end of the bill. It is indorsed with the title of the court and cause, and a notice requiring the defendant to appear in eight days from service, otherwise threatening him with an attachment, &c., and the name of the solicitor and agent, if one.

The bill when drawn must be printed, and filed with the clerk of records and writs, and a copy properly sealed and stamped must be served on the defendant. The next step is the defendant's appearance, or an appearance may be entered for him by the plaintiff, or he may by leave of the court be attached for his contempt.

When the defendant has appeared, the plaintiff files interrogatories with the clerk of records and writs, and delivers a copy to the defendant or his solicitor. This must be done within eight days after the time limited for the defendant's appearance, which, as before seen, is eight days from service of the copy of the bill.

The next regular step is the defence by the defendant, either by plea, answer, demurrer, or disclaimer. If the defendant neglects to take any of these steps, he may be attached for his contempt, and the bill may be taken *pro confesso*, or a traversing note may be filed.

The usual defence, however, is by answer. It must be signed by counsel, and also signed and sworn to by the defendant, unless the other side consent to dispense with either or both these formalities. The answer must be filed with the clerk of records and writs, within twenty-eight days from the delivery of the interrogatories to the plaintiff or his solicitor. A defendant to whom interrogatories have not been delivered is not bound to answer, but he may do so within fourteen days from the time within which he might have been served with interrogatories.

The next regular step in the suit is to file the replication (by which issue is joined) and go into evidence. The plaintiff, however, at this period of the cause often finds it advisable to amend his bill, or he may except to the defendant's answer for insufficiency or scandal. Supposing

he does neither of these latter, but files a replication, evidence is then taken; the time allowed the parties for this purpose is eight weeks after issue joined, after which time evidence is closed, and no further evidence can be taken without the special leave of the court being first obtained.

The next regular step is to set the cause down for hearing, and obtain and serve the subpœna to hear judgment, which must be done within four weeks after the evidence is closed. For this purpose the solicitor obtains the record and writ clerk's certificate that the cause is fit for hearing, which certificate is then taken to the registrar of the court, and the cause will be set down by such registrar. The plaintiff, may, however, if he deems it sufficient, set the cause down on bill and answer, immediately the answer is filed, without going into evidence.

When the subpœna to hear judgment is served, the briefs should be prepared and delivered to counsel, and consultations appointed and attended. The solicitor, having ascertained that the cause is in the paper, should be in court with all necessary papers, and the cause will be called on in its turn, and argued by counsel, and a decree or order made, minutes drawn up, and the decree or order passed and entered. It is, however, in the first instance, generally an interlocutory order or decree, and the cause is referred to chambers, and the directions given by the decree or order are there worked out, and when done, the chief clerk makes his certificate, which, when signed and adopted by the judge and filed, is binding on the parties. The cause then comes on again before the judge, on what is termed further consideration, and a final decree made, which must be passed and entered in the usual way, and, if necessary, may be enforced, by attachment, sergeant-at-arms, and sequestration, or by writ of assistance; and where money or costs are by the decree or order directed to be paid, by writs of *fieri facias* and *elegit*. Where a deed is ordered to be executed and the defendant refuses, the court has the power to order an officer of the court to execute such deed, which has the same effect as if the defendant had executed it.

These are the ordinary proceedings in a suit, but there are several interlocutory proceedings generally occurring in the course of a suit, some of which we have detailed; others are, dismissing the bill, reviving the suit, obtaining security for costs, obtaining further time, &c., &c.

BOOKS TO BE READ IN EQUITY.—The student will be able to gather very little of the principles of equity from the chapter devoted to equity in Mr. Stephen's Commentaries; and the first book we advise the student to read in this branch of the law is Mr. Josiah William Smith's "Manual of Equity Jurisprudence" (9th or 10th edit.),(*a*) which is founded on two very valuable and able treatises on Equity by Story and Spence. It is a concise and able abridgment of the works upon which it is based, and if the student be so inclined, and will make himself thoroughly master of its contents, he may rely upon this little treatise as the only book he needs to study to enable him to pass his examination in the principles of equity. Having accomplished this, next read "Ayckbourn's Chancery Practice," down to Decree; after which the following statutes:—the 15 & 16 Vict. c. 86 (The Chancery Amendment Act, 1852); the 21 & 22 Vict. c. 27 (An Act enabling the Court to award Damages); and the 25 & 26 Vict. c. 42 (An Act compelling the Court to decide Questions of fact or law). Then the Consolidated Orders may be read; after which the candidate may

(*a*) This work is now used as a text-book at the Intermediate Examination.

coach up the Examination Questions and Answers in Hallilay's Digest with great care; and he will have no need to fear being plucked in this branch.

For students seeking honours, whether Smith's Manual of Equity be read or no, the student should study Story's Equity Jurisprudence, which, from its clearness of style and numerous examples, will well repay careful perusal. This done, Tudor and White's Leading Cases in Equity may follow. After which, either Sidney Smith's or Ayckbourn's Chancery Practice concludes the student's course of study in this branch; Morgan's Statutes and Orders, however, being always on hand for reference. And in addition to the Acts already mentioned in this branch, the following should be read:—10 & 11 Vict. c. 96, the 12 & 13 Vict. c. 74, the 13 & 14 Vict. c. 60, and the 15 & 16 Vict. c. 55 (Trustees Act), the 13 & 14 Vict. c. 35, and sect. 14 of 23 & 24 Vict. c. 38 (Summary Administration of Deceased's Estates); the 14 & 15 Vict. c. 83, the 30 & 31 Vict. c. 64 (Lords Justices appointed, &c.); 31 & 32 Vict. c. 4 (Sale of Reversions); 31 & 32 Vict. c. 40 (Partition); the 32 & 33 Vict. c. 46 (Specialty and Simple Contract Debts); and 33 & 34 Vict. c. 93 (Married Woman's Property).

SECTION IV.

BANKRUPTCY.

Bankruptcy owes its origin to the legislator; the ancient common law had made no provision for it.

The objects of the bankrupt laws are, first, to protect an honest but unfortunate debtor from the grasping creditor; and, secondly, to distribute amongst the creditors equally what assets there may be. Thus the debtor becomes again free, and the creditors' interests are cared for.

The 32 & 33 Vict. c. 71, and rules made thereon, now govern the bankrupt laws.

The present Court of Bankruptcy consists of the London Bankruptcy Court and the County Court (except the metropolitan courts and some small County Courts excluded by the Lord Chancellor). The judge of the London court is styled the Chief Judge in Bankruptcy, and has all the powers, jurisdiction, and privileges possessed by the judges of the Superior Courts of common law or equity.

The judges of the County Courts, with jurisdiction in bankruptcy, have all the powers and jurisdiction of a judge of the Court of Chancery. The judges may, subject to the rules of court, delegate to the registrars of the court such of the powers vested in them as they may deem expedient, except the power of commitment for contempt of court.

An appeal lies from the local (the County Court) courts to the Chief Judge, and from him to the Court of Appeal in Chancery (the Lords Justices). By leave of the Lords Justices, an appeal lies from them to the House of Lords.

Before a person can be adjudged bankrupt, the petitioning creditor must show a sufficient debt; an act of bankruptcy committed within the preceding six months; and (if the person is a trader) a trading within the meaning of the bankruptcy law. A sealed copy of the petition must be served on the debtor seven days before the day of hearing. Upon the day appointed the debtor may, having previously filed a notice of his intention, show cause against being adjudicated. If the debtor does not appear, the

creditor must prove the statements in the petition, and if he succeeds in establishing his case the court will make an order of adjudication. The order is advertised in the *London Gazette*, and, if the bankrupt resides in the country, also in a local paper.

A general meeting of creditors is then called, when the bankrupt attends, having filed a statement of his affairs. The creditors prove their debts, appoint a trustee (whose duty is chiefly to get in the bankrupt's estate), and frequently a committee of inspection.

A day is appointed for the bankrupt's examination in court, at which meeting the bankrupt is to be publicly examined on the statement produced at the first meeting. After passing this examination, and having discovered all his property, the bankrupt may apply for an order of discharge if his estate has paid a dividend of 10*s.* in the pound. He may also, at any time during the continuance of the bankruptcy, or at its close, make such application, with the assent of the creditors testified by a special resolution.

An undischarged bankrupt cannot be sued for any debt provable under the bankruptcy within three years after its close.

An order of discharge bars all debts provable under the bankruptcy unless incurred by fraud or breach of trust, and except Crown debts and the like.

LIQUIDATION BY ARRANGEMENT.—If a debtor be unable to meet his engagements, he may present a petition to the court, stating the facts, and desiring that proceedings may be taken for the liquidation of his affairs. A general meeting of creditors is summoned, when the creditors elect a chairman and prove their debts. They may then pass a special resolution that the affairs of the debtor are to be liquidated by arrangement and not in bankruptcy, and may appoint a trustee, with or without a committee of inspection; such resolution is carried by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at the meeting, and voting on such resolution. The debtor must be present at this meeting to produce a statement of his affairs and answer any inquiries. The resolution must be registered. The duties of a trustee are similar to those in case of bankruptcy.

A resolution of the creditors is required for the debtor's discharge, which may be passed at the first, or some subsequent general meeting.

COMPOSITION WITH CREDITORS.—At the general meeting summoned as above mentioned, a majority in number representing three-fourths in value of the creditors assembled at such meeting, may pass an extraordinary resolution agreeing to accept a composition. The resolution must be filed. It must be confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting, held at an interval of not less than seven nor more than fourteen days from the date of the first meeting. The second meeting is summoned in the same manner as the first meeting.

The provisions of the composition bind all creditors named in the statement produced to the meetings at which the resolutions were passed, but will not affect the rights of other creditors.

BOOKS TO BE READ.—For the student, Smith's "Manual of Bankruptcy" is an appropriate book. But for the practitioner Robson's is a comprehensive work. Mr. Salaman's treatise on liquidation by arrangement and composition will be found very useful.

SECTION V.

CRIMINAL LAW.

The knowledge of this branch of jurisprudence teaches the nature, extent, and degrees of every crime, and its adequate and necessary penalty.

A crime is the violation of a right when considered in reference to the evil tendency of such violation as regards the community at large.(*a*)

The distinction between crimes and civil injuries seems to be this: that private wrongs or civil injuries are an infringement or privation of the civil rights which belong to individuals, simply as individuals; public wrongs or crimes are a violation of the same rights, considered in reference to their effect on the community in its aggregate capacity.

Crimes may be divided into three kinds:—

1. Treasons.
2. Felonies,
3. Misdemeanors.

Treason itself, says Coke, was anciently comprised under the name of felony: and, strictly speaking, all treasons are felonies, though all felonies are not treasons.

Treason is treachery against the sovereign or liege lord, and is the highest civil crime, which, considered as a member of the community, any man can possibly commit.

Felony, in the general acceptation of our English law, comprises every species of crime which occasioned at common law a forfeiture of lands and goods.

The term *misdemeanor* is, properly speaking, synonymous with that of crime, though in common usage the word is made to denote such crimes as do not amount to felonies.(*a*)

Crimes are divided into:—

1. Offences against the person.
2. Offences against property.
3. Offences against the Government.
4. Offences against religion.
5. Offences against the law of nations.
6. Offences against public justice.
7. Offences against the public peace.
8. Offences against public trade.
9. Offences against the public health, police, or economy.

There are certain persons who are exempted from punishment for crime arising from the want or defect in *will*. There are three divisions in which the will does not join with the act. 1. Where there is a defect of understanding, as infancy or lunacy. 2. Where there is understanding and will sufficient residing in the party, but not called forth and exerted at the time of the action done, which is the case of all offences committed by chance or ignorance. Here the will sits neuter, and neither concurs with the act nor disagrees with it. 3. Where the action is constrained by some outward force and violence. Here the will counteracts the deed, and is so far from concurring with, that it loathes and disagrees to, what the man is obliged to perform.(*a*)

(*a*) See Steph. Com., vol. iv.

It is a maxim of the criminal law, as well as the civil, that *ignorantia juris, quod quisque tenetur scire, neminem excusat.*

The courts possessing original criminal jurisdiction are, the House of Lords, the several Crown sides or Courts at Assizes, the Central Criminal Court, and the several Courts of Quarter, Special, and Petty Sessions. The Courts of Appeal are the Queen's Bench and the Court of Crown Cases Reserved.

The modes of taking proceedings are either *summary* before justices at petty sessions, by information and summons, or warrant; or they are *formal* by indictment.

The following is a sketch of the formal proceedings:—

When an indictable felony or misdemeanor has been committed, a bill of indictment may be preferred at the quarter sessions or assizes, without any preliminary hearing before a justice, except in the case of perjury, subornation of perjury, conspiracy, obtaining money or property by false pretences, keeping a gambling-house, and any indecent assault (unless any of these offences may be joined with the rest of the indictment, &c.) (*a*); but, although there is nothing to prevent this, it is a course very rarely taken; usually before this is done the offender is taken before a magistrate with a view to his committal for trial. The mode of bringing the accused before a magistrate may be either by summons or by arrest under a warrant, or by arrest without a warrant. At a convenient time the charge will be heard by the magistrate, and before the accused is committed to trial or admitted to bail, such magistrate must in the accused's presence take a statement on oath or affirmation of those who know the facts and circumstances of the case, the accused being at liberty to cross-examine any witness produced against him, and the statement is to be put into writing, and when so done, is to be read over to and signed by the witness, and also signed by the committing magistrate; and if at the trial of the accused it can be proved that any witness is dead, or unable to travel, these depositions may then be used.

When the depositions have been taken, the justice is bound to read or cause them to be read, and say to the prisoner these words, or words to the following effect: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial." Any statement then made by the prisoner is taken down and put into writing, read over to and signed by the prisoner, unless he object to do so, and also signed by the magistrate; also, before the prisoner makes any statement the magistrate must clearly give him to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt. The accused must also now be asked if he wishes to call witnesses.

The next step is to bind over the prosecutor and witnesses to prosecute and give evidence at the trial. The depositions and recognizances are then transmitted to the place where the prisoner is to be tried. Instead of committing the accused to prison the magistrate may, in certain cases, admit him to bail.

The next proceeding is to prepare the brief for the prosecution, which contains the title of the court, and states the prosecution. The substance

(*a*) See 22 & 23 Vict. c. 17; 30 & 31 Vict. c. 35.

of the indictment follows; then comes the case and proofs. This brief is delivered to counsel.

The indictment is at the trial presented to the grand jury, who examine such witnesses as they think fit, and a majority of twelve at least, either find what is called a "true bill," and so indorse the bill, or they ignore it, and indorse it with the words "no bill."

This bill (with others) is taken into court and delivered to the clerk of the peace or his deputy, who, in the presence of the grand jury, announces the finding. Upon the bill being found, the prisoner, if out on bail, is called upon to surrender.

The indictment is then read over to the prisoner, and his plea is taken. If he pleads "guilty," the plea is recorded, and sentence may then be passed upon him. If he pleads "not guilty," which is the most usual plea,(*a*) it is in like manner recorded, and the trial is proceeded with. A jury of twelve are called over, any of whom the prisoner has a right to challenge, and, if not objected to, are sworn "to well and truly try," &c. The clerk of arraigns reads over the substance of the indictment, and then states the prisoner's plea, and directs the jury to inquire whether the prisoner be guilty or not guilty. The case for the Crown is opened and the evidence given, the prisoner or his counsel having a right to cross-examine any or all of the witnesses. The prisoner then makes his defence, and if he thinks fit calls evidence, in which case the prosecutor is entitled to a reply. If the jury find the prisoner guilty, and there is no ground for a new trial, or no point of law reserved, the sentence follows.

BOOKS TO BE READ.—On crimes, that portion of the fourth volume of Stephen's "Commentaries" or Broom's "Commentaries," relating to the subject, may be read; on magistrates' and sessions practice, Saunders' "Magistrates' Practice," or Oke's "Magistrates' Synopsis," are recommended; on evidence, Archbold's "Criminal Pleading and Evidence," by Welsby, will be found a most able treatise.

For the law relating to the Poor-laws, Archbold is recommended.

Medical Jurisprudence.

The study of medical jurisprudence should form part of the student's studies in this branch of the law.

The best text-book is Taylor.

SECTION VI.

THE ECCLESIATICAL COURTS.

The Divorce Court.

The stat. 20 & 21 Vict. c. 85, which came into operation on the 1st of January, 1858, abolished the jurisdiction of the Ecclesiastical Courts over divorces *à mensâ et thoro*(*b*), suits of nullity of marriage, suits for

(*a*) The prisoner may plead "autrefois acquit," "autrefois attaint," "autrefois convict," or pardon. He may also object to the indictment, or to the jurisdiction of the court.

(*a*) A divorce *à mensâ et thoro* literally means from bed and board. The marriage is, or rather was, not dissolved by this kind of a divorce, as was the case on a divorce *à vinculo matrimonii.*

restitution of conjugal rights, and in all causes and matters matrimonial, except the granting of marriage licences; and that jurisdiction is now transferred to and vested in a court called The Court for Divorce and Matrimonial Causes, composed of certain of the existing judges and a judge-ordinary of its own. No decree for a divorce *à mensâ et thoro* is henceforth to be made; but in all cases where such decree might formerly have been pronounced, a decree for a judicial separation, having the same effect, is substituted. There are to be no more actions for *crim. con.* But the husband, either in a petition for a dissolution of marriage, or for judicial separation, or limited to the money object alone, may claim damages against the offender; and the claim made by such petition is to be heard and tried on the same principles as, and in a similar manner to, actions for criminal conversation; and the damages are in all cases to be assessed by the jury; the court, however, having power to direct in what manner they are to be paid or applied. It may direct, for instance, the whole or a part to be settled either on the children of the marriage, or as a provision for the maintenance of the wife; and when the fact at issue is established, the court has power to compel the offending party to pay the costs of the proceedings.

A sentence of judicial separation—which has the effect of a divorce *à mensâ et thoro*—may be obtained either by the husband or wife, on the ground of unfaithfulness, cruelty, or desertion without cause for two years and upwards. But if such separation has been obtained by a husband or wife in the absence of the other, that other may present a petition for a reversal of the order, stating, for instance, that there was reasonable grounds for the alleged desertion, where desertion was the ground of the decree; and the court may order a reversal accordingly: but such reversal will not affect the rights of third parties, as persons who have dealt with the wife during the time that has elapsed between the decree for separation and its reversal. Applications for restitution of conjugal rights, or for judicial separation on any of the grounds before detailed, may be made either by husband or wife to the Court of Divorce; and where the application is by the wife, the judge may make an order for alimony—that is, an allowance to the wife in money.

A wife deserted by her husband may apply to a police magistrate, if one, or to justices in petty session, or to the Court of Divorce, for an order to protect any money or property she may acquire by her own lawful industry, or which she may otherwise become possessed of after such desertion, against her husband or his creditors, or any person claiming under him; and if the protecting order is made, her earnings and property shall belong to her as if she were a *feme sole.* But it is provided that when such order is made by a police magistrate or justices at petty sessions, it must be entered within ten days afterwards with the registrar of the County Court within whose jurisdiction the wife is resident; and a power is also given to the husband, or any creditor or person claiming under him, to apply to the Court of Divorce, or to the magistrate or justices by whom such order was made, for its discharge. If the husband, or his creditors, or any person claiming under him, seizes, or continues to hold any property of the wife after notice of such order, he shall be liable at the suit of the wife to restore the property, and also a sum double its value. And if any such order for protection be made, the wife is, during its continuance, to be and be deemed to have been, during such desertion, in the like position in all respects with regard to property and contracts, and suing and being sued, as she would be if she had obtained a

decree for a judicial separation; the effects of which we shall next state.

In cases where a judicial separation has been decreed, the wife, from the date of the sentence, and whilst the separation continues, is to be considered as a *feme sole* with respect to property of every description which she may acquire, or which may come to or devolve upon her; and if she dies intestate, it will go to her next-of-kin, as if her husband was not living. And if she again cohabits with her husband, all such property is to be applied to her separate use; subject, however, to any written agreement to the contrary made between them while they are separate. She is also to be considered as a *feme sole* as regards entering into contracts and engagements, wrongs and injuries, suing and being sued, and her husband is no longer liable for her in any way; but if alimony has been decreed to the wife, and the husband does not pay it, he is liable for the necessaries supplied to her.

We now come to that portion of the Act which gives the court power to dissolve the marriage, and the grounds for so doing. This is governed by the twenty-seventh and following sections of the Act, which provide that a husband may present a petition to the court for a dissolution of his marriage—not merely a judicial separation—on the ground that his wife has been unfaithful; and the wife may present a petition for a dissolution of her marriage on the same ground under certain aggravations, or if in connection with unfaithfulness, there has been such cruelty as would of itself have entitled her to a divorce *à mensâ et thoro*, or if the unfaithfulness was coupled with desertion without reasonable excuse for two years or upwards; and the petition must state as distinctly as possible the facts on which the claim to have the marriage dissolved is founded. The alleged offender is to be made a co-respondent—that is, made to answer the petition along with the wife—unless excused by the court. Upon every petition for dissolution of marriage, the court is to be satisfied that there is no collusion between the parties, and if the fact is not fully proved, the petition is to be dismissed. If, on the other hand, the court finds that the case of the petitioner is fully proved, a decree is to be pronounced dissolving the marriage; but if the court finds that the petitioner has, during the marriage, been guilty of unfaithfulness, or of unreasonable delay in presenting the petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other before the infidelity complained of, and without reasonable excuse, the court is not bound to pronounce a decree for dissolution of the marriage. On making a decree dissolving the marriage the court has power to order that the husband shall secure to the wife a gross sum of money, or an annual sum of money, for any term not exceeding her own life, proportioned to her fortune (if any), to the ability of the husband, and the conduct of the parties. And the court has power to direct to whom this sum shall be paid; whether to the wife herself, or to trustees on her behalf, and may impose other restrictions on it. Also, in any suit or other proceeding for obtaining a judicial separation or a decree of nullity of marriage, and on any petition for dissolving of marriage, the court may either by any interim orders, or by the final decree, make such provision as may be deemed just and proper with respect to the custody, maintenance, and education of the children, and may also give directions for placing them under the protection of the Court of Chancery. And in any case in which the court pronounces a sentence of divorce or judicial separation for unfaithfulness of the wife, and the wife is entitled to pro-

perty either in possession or reversion, the court has power to order such settlement as it thinks reasonable to be made of such property, or any part of it, for the benefit of the husband or the children of the marriage.

A power of appeal is given from the judge-ordinary of the court to the full court, whose decision is final, unless the petition was presented for a dissolution of marriage, in which latter case there is an appeal from the decision of the full court to the House of Lords.

If no appeal is made from the decree dissolving the marriage within six months from the date of the decree, or if an appeal is made, and such appeal is dismissed, the parties may then, and not before, marry again, as if the prior marriage had been dissolved by death. But no clergyman in holy orders of the Church of England or Ireland can be *compelled* to solemnize the marriage of any person whose former marriage may have been dissolved on the ground of his or her culpability, or is liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of such person. But if the minister refuses to perform the marriage-service, he is to permit any other minister in holy orders entitled to officiate within the diocese in which the church or chapel is situated, to perform there the marriage-service.

The reader has now a general view of the new law of divorce, and we will next give a sketch of its practice, which is to the following effect:

The first step is to present a petition, which is filed at the principal registry along with an affidavit of verification; the affidavit must also state that there is no collusion.

The next step is to bring the respondent or respondents before the court, which is done by serving him or them with a *citation*, duly stamped and signed by a registrar, having first left a præcipe with the clerk at the registry. At the time of serving the copy of the citation the original should be produced and shown; a copy of the petition is also left with the copy citation. When the copy citation is served the original is returned into and filed in the registry of the court.

The respondent or respondents should, on the expiration of eight days from the service of the copy citation, enter an appearance thereto, at the registry, and file an answer within twenty-one days from the service of the citation, and where new matter is alleged it must be accompanied by an affidavit of verification, which must also deny collusion. And on the day the answer is filed a copy must be delivered to the petitioner or his or her proctor or attorney. The petitioner has fifteen days to reply to this answer, and the respondent again fifteen days to answer the reply.

When the proceedings have raised the question of fact necessary to be determined, either party may, within fifteen days from the filing of the last proceedings, apply to the court to direct any question of fact to be tried by a jury. If neither party make this application, the court may determine how the cause shall be tried.

When judgment is given, it is entered on the rolls of the court by the registrar, a copy of which may be obtained.

Mr. Geo. Browne's treatise on Divorce may be studied.

The Probate Court.

By the stat. 20 & 21 Vict. c. 77, entitled "An Act to amend the Law relating to Probates and Letters of Administration in England," and now in full operation, it is enacted that the *voluntary and contentious jurisdiction and authority* of Ecclesiastical, Royal, Peculiar, Manorial and other

courts and persons in England, which, before the passing of this Act, had jurisdiction or authority to grant or revoke probate of wills or letters of administration of the effects of deceased persons, shall in respect of such matters, absolutely cease, and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of or connected with the grant or revocation of probate or administration, shall belong to or be exercised by any such court or person. And this jurisdiction is now vested in the Court of Probate, which is a court of record, presided over by one judge, who is assisted by the officers of the court:

By section 23, however, of the Act, it is provided that no suits for legacies or suits for the distribution of residues shall be entertained by the court, or by any court or person whose jurisdiction as to matters and causes testamentary is abolished by the Act.

As to the mode of proving wills and obtaining grants of letters of administration, and the law relating thereto, the student is referred to Coote's "Probate Court Practice."

SECTION VII.

MISCELLANEOUS LAWS.

There are several other divisions of the law, but as they are not requisite for the examination we shall notice them very briefly, leaving those students who desire information in these branches to seek it in the works pointed out.

International Law.

Every student should possess some knowledge at least of international law, which teaches the rights of men and states. And it is laid down "that different nations ought in time of peace to do each other all the good they can, and in time of war as little harm as possible without prejudicing their real interest."

For a first book, Wheaton's "Elements of International Law" is the best; and, should the student be desirous of pursuing the subject further, Story's or Westlake's "Conflict of Laws" may be read.

Colonial Law.

This is a branch of the law seldom studied by our lawyers at home, which is somewhat to be wondered at, seeing the vast extent of our colonial possessions and their great importance.

There is no work that the writer is aware of that treats of colonial law singly, but the best work on the subject is "Clark's Summary;" no edition, however, has been published since 1834.

The Roman or Civil Law.

Lord Holt says that there can be no doubt that the laws of all nations are based upon the civil law; if so, a knowledge of it would seem indispensable to the lawyer. The student will, however, be unable to study this branch of the law without a moderate knowledge of Latin and Greek.

The student may read as a first book Lord Mackenzie's "Studies in Roman Law."

PART II.

BOOK-KEEPING.

INTRODUCTORY REMARKS.

BOOK-KEEPING now being a branch of the articled clerk's education, and one of the subjects at the intermediate examination, a short chapter upon it becomes necessary.

Book-keeping is the art of keeping accounts or recording business transactions; and its object is to enable the person who keeps them, at any time, to ascertain the true state of the whole or any part of his affairs with accuracy and expedition.

Books may be kept either by single or double entry. The former is chiefly used by small tradesmen or retail dealers; a single entry of the account in the ledger being sufficient for the purpose of a record. It is the most simple and concise method of keeping accounts, but has this radical defect, that as the ledger has no reference to ready money transactions, the tradesman cannot ascertain the true state of his affairs without first *taking stock;* that is ascertaining the quantity and value of the goods unsold. In double entry this objection is avoided because each account is entered *twice,* first on the debtor or creditor side of one account, and afterwards on the contrary side of some other account. This method is therefore used by persons engaged in extensive commerce. However, there is no iron rule or system of book-keeping, the fact being that in practice scarcely any two systems are carried out in exactly the same mechanical form, but naturally in a way most suited to the technical nature of the peculiar transactions or the taste of the merchant. We shall only treat of book-keeping by single entry in the following pages, in the most simple way we can. Before, however, we say anything about the books used in keeping accounts we will refer briefly to certain

COMMERCIAL FORMS.

Bills of Parcels or Invoice.

When goods are sold, a note or memorandum of their quantity, quality, and value, called a bill of parcels or invoice, is usually sent to the buyer with the goods, somewhat in the following form :—

Mr. SMITH. London, January 1st, 1865.

Bought of J. BROWN.

	£	s.	d.
10 yards of best West of England Cloth, @ 10*s.* per yard...	5	0	0
12 ditto Scotch Tweed, @ 6*s.* per yard	3	12	0
10 ditto best Merino, @ 6*s.* per yard	3	0	0
£	11	12	0

The example above given is that of an inland bill of parcels or invoice; but they may be also foreign, the latter frequently being an account of merchandise consigned by a person abroad to an agent here for sale, which will be treated of under the following head of

Account Sales.

If goods are sent to an agent to sell, they are said to be sent for sale and return. The person who sends the goods is termed the consignor, the goods sent the consignment, and the person or agent to whom they are sent the consignee. The note or account transmitted to the agent with the goods is called, as above stated, the invoice. The account of the sales, usually termed "an account sales," is the agent's return to the consignor of the goods sold, and if any remain unsold, returned, with the rates at which they were sold, deducting charges for freight, insurance, commission, &c.

Pro formâ invoices and account sales, or fictitious accounts, are sometimes used. For example, a merchant abroad may be desirous of sending here a particular class of goods for sale on speculation, and in order to ascertain whether he is likely to realise a profit thereby, writes to his agent here for a *pro formâ* account sales of the particular class of goods he wishes so to send. The agent sends the account as required, and the foreign merchant can then judge as to the propriety of the contemplated speculation.

The following is the form of an account sales, adapted from Mr. Isbister's work on book-keeping :—

SALES 50 bales Cotton per the "Waterloo" from New Orleans, on account of Marshall and Co.

Dr. Cr.

		£	s.	d.			£	d.	s.
Jan.	Freight of 50 bales of cotton @ 10s. each ...	25	0	0	Jan.	Sold Somerville and Co., payment by bill at two months for 205*l.* 8s. 6d., and cash for remainder, the 50 bales weighing cwt. qr. lb.			
	Weighing and delivery...	2	2	0		Gross 187 2 15			
	Landing, wharfing, warehousing, &c.	5	5	0		Draft at 11lb. per bale ... 0 1 22			
	Insurance	1	0	0		187 0 21			
	Commission 2½ per cent...	12	12	8½		Tare 4lb. per cwt. 6 2 20			
	To Marshall and Co., net proceeds	459	8	9½		180 2 1	505	8	6
		505	8	6		Mar. 30, 1863.			

Accounts Current.

These accounts contain all the transactions of a mercantile house with one of its correspondents during a given time, usually six or twelve months. On the debtor side of the account are placed all payments made and responsibilities incurred for the correspondent; and on the creditor side the various receipts from him or on his account. The interest for the half-year, the commission on receipts and payments, small charges and postages, being added, the account may be closed and the balance carried to the next year.

The following is an example of an account current, with the interest calculated thereon and balanced off: (*a*)

MARSHALL and Co. (New Orleans), their Account Current with A. B. from January 1 to June 24.

Dr. Cr.

1853.		£	s.	d.	1853.		£	s.	d.
Jan. 31	To amount of sundry Goods per the "Vancouver," as per invoice	652	6	8	Jan. 1	By Balance due as per account rendered 31st ult.	316	4	0
Feb. 1	To premium on 3500*l* insured per the "Waterloo," Duncan, New Orleans to London, @ 6 guineas per cent. to return 1½ per cent. for convoy, and arrives...	220	10	0	Feb. 17	By a Bill of Exchange, Harris on Simpkins, due March 13	280	0	0
June 24	To postage of Letters	0	15	6	Feb. 26	By net proceeds of 25 bales of cotton and 50 bags of Pimento, per the "Washington," as per Account of Sales, due April 26	954	15	9
	To Balance in your favour carried to new Account	732	10	7	Mar. 28	By return of Premium per the "Waterloo," 3500*l* @ 1½ per cent.	52	10	0
		1606	2	9	June 24	By Balance of your Interest Account ...	2	13	0
							1606	2	9

London, June 24, 1855.
Errors excepted.
A.B.

Dr. INTEREST. ACCOUNT. Cr.

Jan. 31	652*l*. 6*s*. 8*d*. from this day to June 24, 144 days @ 5 per cent. per ann.	12	17	4	Jan. 1	316*l*. 4*s*. 0*d*. from this day to June 24, 174 days @ 5 per cent. per ann.	7	10	9
Feb. 1	220*l*. 10*s*. 0*d*. from this day to June 24, 143 days @ 5 per cent. per ann.	4	6	4	Mar. 13	280*l*. 0*s*. 0*d*. from this day to June 24, 103 days @ 5 per cent. per ann.	3	19	9
June 24	Balance carried to Account Current ...	2	13	0	Mar. 28	52*l*. 10*s*. 0*d*. from this day to June 24, 88 days @ 5 per cent per ann.	0	12	7
					Apr. 26	954*l*. 15*s*. 9*d*. from this day to June 24, 59 days @ 5 per cent. per ann.	7	14	4
		19	16	8			19	16	8

Accounts Generally.

In keeping accounts it should always be remembered that anything received by you is entered on the debtor side of your account, and anything delivered or paid on the creditor side; or, as the rule is abbreviated, "in Dr., out Cr."

Accounts are also divided into *personal and impersonal, or real.* The former including all those in which *persons* are concerned, and are those used in single entry. The latter are those opened merely for merchandise or any description of property, as cash, bills, ships, &c., and are only used in double entry, the cash account perhaps excepted.

Bills of Exchange.

Bills of exchange forming a large portion of mercantile transactions, a few remarks upon them become necessary, which will also enable the

(*a*) This form of account is taken from Isbister's "Elements of Book-keeping," to which work we beg to acknowledge our obligations throughout.

student to understand the proper use of the "Bill-Book," to be hereafter explained.

Bills of exchange are securities for money, originally invented among merchants in different countries for the more easy remittance of money from one to the other, and have since spread themselves in almost all pecuniary transactions amongst merchants, and to a great extent amongst tradesmen. A bill of exchange is defined to be an unconditional written order from one person (called the *drawer*) to another (called the *drawee*) requesting that other to pay a sum of money therein mentioned to a third person (called the *payee*) or his order. After the drawee has consented to do so, which he does by writing upon the bill, he is termed the *acceptor*. Inland bills are generally made payable to the drawer's own order, and not to a third person.

To illustrate this: Suppose A. resides in Hamburgh and owes B. of London 100*l.*, and C. of London owes A. of Hamburgh 100*l.* To settle these accounts A. draws a bill of exchange upon C., requesting him to pay to B. or his order the 100*l.* he owes C.

Bills of exchange are either inland or foreign, an inland being one drawn and accepted here, and it must be stamped before it is drawn. Foreign bills are drawn here and accepted abroad, or *vice versâ*, and are usually drawn in sets. They may be stamped after being drawn. It must be remembered that to make a bill of exchange a negotiable instrument it must be made payable to order or bearer, in which case there are generally other parties to the bill, called *indorsers*.

The following is the form of a foreign bill:

Exchange for £100. Hamburgh, 1st Oct. 1864.

At two months after date pay, this my first bill of exchange, second and third, of the same tenor and date, not paid, to Mr. B., or order [*or* bearer], one hundred pounds value received of him, and place the same to account as per advice from

J. A.

To Mr. C., at London.

Accepted payable at the City Bank.

L. C.

In the form above given there are three sets or copies transmitted by separate ships or conveyances, so that if one or two are lost the third is almost certain to arrive.

The following is the form of an inland bill:

£100 0 0. London, Oct. 1st, 1864.

Three months after date pay to me or my order one hundred pounds, for value received.

A. B.

To Mr. B. C., London.

Accepted payable at the Union Bank.

B. C.

In the United Kingdom and in most other countries there are three days allowed to pay the bill, after the actual time of payment mentioned on the bill has elapsed. These are called *days of grace.*

BOOKS TO BE USED.

We now come to the books to be used, and it is often said that in book-keeping by single entry only two books are necessary, viz., a day-book and ledger. If this method be adopted the day-book must contain a record of

all the transactions of each day in the order in which they occur. The person with whom the transaction is entered into is named in full, with the term debtor or creditor annexed, according as to whether you sell goods to him or buy goods from him, &c., somewhat after the following manner:

DAY BOOK.

Folio Ledger.		£	s.	d.
1	London, January 1st, 1864.			
	Chambers and Co.— Cr.			
	12 doz. Sauterne, @ 40s. per doz.	24	0	0
	10 doz. Chablis, @ 40s. per doz.	20	0	0
	(Bill at three months)	44	0	0
	January 2nd.			
	R. Smithson— Dr.			
	200lb. Tea, @ 3s. per lb.	30	0	0

And so on from day to day, entering also cash receipts and payments. However, the day-book is generally divided into the following:

INVOICE-BOOK, for goods *bought* on credit.

DAY-BOOK, for goods *sold* on credit.

CASH-BOOK, for all cash received and paid.

BILL-BOOK, for all bills receivable and payable.

A STOCK-BOOK, for all goods on hand when stock is taken and books balanced, is sometimes added.

The LEDGER collects together the dispersed account of each person in the above books under one entry.

The following shows the nature of the entries in the

INVOICE BOOK.

Folio Ledger.		£	s.	d.
1	London, January 1st, 1864.			
	J. Edwards and Son—			
	3 doz. Sauterne @ 40s. per doz.	6	0	0
	2 doz. Chablis, @ 40s. per doz.	4	0	0
		10	0	0

NOTE.—Enter in like manner all goods bought, omitting the word "Cr."

And the following those in the

DAY BOOK.

Folio Ledger.		£	s.	d.
1	London, January 1st, 1864.			
	J. Smith—			
	20lb. Muscatel Raisins, @ 6d. per lb.	0	10	0
	40lb. Tea, @ 3s. per lb.	6	0	0
		6	10	0

NOTE.—Enter in like manner all goods sold, omitting the word "Dr."

Cash Book.

This book, as we said before, contains a record of all money received and paid. Sums *received* are entered on the left hand or debtor side, and sums *paid* on the right hand or creditor side. It begins with cash in hand at commencement of business.

The following is its form, with a few entries:

1863.	Folio Ledger.	Dr.	£	s.	d.	1863.	Folio Ledger.	Cr.	£	s.	d.
Jan. 1	...	Cash in hand...	200	0	0	April...	...	J. Edwards & Son	10	0	0
April 3	...	J. Smith	6	10	0			Discount on J. Brown's acct.	0	12	0
								Insurance ...	1	0	0

Of course the balance of this account must always be on debtor side, because it is impossible to pay more than is received. We now come to the

Bill Book.

This book contains a record of all bills of exchange receivable by, *i.e.*, payable to, a mercantile house, and also all bills accepted by, and therefore payable by, the same mercantile house, with the dates, terms of payment and other particulars, in the following form:

BILLS RECEIVABLE.

Folio Ledger.	When and from whom received.	Drawn by	Date.	Term.	Drawn on	Due.	Amount.	When and how disposed of.
	Jan. 1st, R. Jones.	Self.	Jan. 1	3 months.	R. Jones.	Apr. 4th.	£20 0 0	Discounted for cash.

BILLS PAYABLE.

Folio Ledger.	Drawn by	Payable to	Date	Term.	Amount.	Due.	When and to whom paid.
	Chambers & Co.	Order.	Jan. 1	3 months.	£44 0 0	April 4.	April 4. Chambers & Co.

NOTE.—It will be remembered that days of grace are allowed for paying a bill, which will account for a bill due on the 1st not being payable until the 4th of the month.

The Ledger.

This book, as we have before stated, is an abstract of the entries contained in the other books, collected together and arranged in the order of their dates under the names of the various persons to which they belong. The copying of these entries into the ledger is termed *posting the ledger*. It is usual, in posting the ledger, to merely say "By goods" or "To

goods," and not enter the particulars of the transaction. The following is the form of the ledger :—

1863.	Folio D.B. or C.B.	Dr.	£	s.	d.	1863.	Folio D.B. or C.B.	Cr.	£	s.	d.
April	1	Edwards & Son To Cash ...	10	0	0	Jan. 1	1	By Goods ...	10	0	0
Jan. 1	1	Smith, J. Dr. To goods ...	6	10	0	Apr. 3	1	Cr. By Cash	6	10	0

Stock Account.

This account is ascertained by taking stock. The goods on hand are valued at cost price, or, if necessary, at a percentage below cost price to allow for bad stock, or depreciation in value, &c. The amount for goods sold is then added to the stock on hand, the goods bought are then deducted, and the difference shows the gross profit or loss, without reference to bad debts, trading expenses or other charges, which are collected in the

Profit and Loss Account.

This account is formed by entering on the debtor side the *losses*, as bad debts, trading expenses, discounts, &c. ; and on the creditor side the *profits*, if any, shown by the stock account, the discounts allowed *to* you, &c. The balance or difference between the two sides will give the net profit or loss. The following illustrates the above :—

1863.	Folio D.B.	Stock. Dr.	£	s.	d.	1863.	Folio D.B.	Contra. Cr.	£	s.	d.
July 31	.....	To goods bought as per I. B. ...	205	10	6	July 31	.....	By goods sold ...	101	5	7
		To profit and loss	55	6	3			By stock of goods on hand	159	11	2
			260	16	9				260	16	9
		Dr. Profit and Loss.						Cr. Contra.			
July 31	.....	To discount allowed W. Norton	1	0	0	July 31	.....	By discount R. Jones	4	11	11
		To J. Brown, bad debt	0	13	10			By stock account	55	6	3
		To net profit ...	58	4	4						
			59	18	2				59	18	2

The Balance Sheet.

This is a summary of the several balances (except those of the stock and profit and loss accounts) dispersed throughout the ledger. On the creditor side are entered all balances owing *to* you, to which are added the cash in hand, as shown by balancing the cash book, and the value of unsold goods, which may be obtained from the stock account. On the debtor side are entered your capital at commencement and all balances owing *by* you. The assets and liabilities of the concern are thus exhibited at one view, and their difference will give the net profit or loss within the given period. If the accounts have been properly kept this difference will correspond with the balance of the profit and loss account.

Independently of its other advantages, the balance-sheet enables the tradesman or merchant, in connection with the ledger, to ascertain his real worth by two distinct processes:

Dr. BALANCE SHEET. Cr.

	£	s.	d.		Ledger Folio.	£	s.	d.
Cash at commencement ...	200	0	0	Smithson, R.	2	30	0	0
Balance, net profit	58	4	4	Broomhead. Hy.	2	10	2	0
				Cash in hand as per cash account	...	58	11	2
				Stock	...	159	11	2
	258	4	4			258	4	4

Thus we have traced a history of the method of book-keeping by single entry.

A digest of all the Examiners' questions on this branch, with answers, will be found at the end of this work.

PART III.

CHAPTER I.

PROCEEDINGS TO BE TAKEN PREVIOUS TO EXAMINATION.

We will now suppose the student to have completed his studies and to be desirous of offering himself for final (*a*) examination. We now, therefore, detail the proceedings that are necessary to be taken by him for this purpose, giving also the necessary forms.

We may premise that no person can be admitted and enrolled an attorney, unless he has duly served his term of clerkship, and on this point the 2nd section of the 22 & 23 Vict. c. 127, repeals sect. 7 of 6 & 7 Vict. c. 73, and substitutes the following:—

"And any person having taken the degree of bachelor of arts or bachelor of laws in the University of Oxford, Cambridge, Dublin, Durham, or London, or in the Queen's University in Ireland, or the degree of bachelor of arts, master of arts, bachelor of laws, or doctor of laws, in any of the Universities of Scotland, none of such degrees being honorary degrees, and who at *any time* after having taken such degree, and either before or after the passing of this Act, has been bound by and has duly served under articles of clerkship to a practising attorney or solicitor for the term of three years, and has been examined and sworn in manner directed by the first hereinbefore-mentioned Act and by this Act, may be admitted and enrolled as an attorney or solicitor, and service for any part of the said term not exceeding one year with the London Agent of such attorney or solicitor in the business, practice, or employment of an attorney or solicitor, either by virtue of any stipulation in such articles, or with the permission of such attorney or solicitor, shall be and be deemed to have been good service under such articles for such part of the said term; and where any person has before the passing of this Act, and at any time after having taken such degree, been bound as aforesaid for five years, he may, after having duly served three years of such term in such manner as would have been required if he had been bound for three years only, and having been examined and sworn as aforesaid, and with the consent in writing (endorsed on his articles of clerkship) of the attorney or solicitor to whom he may be bound, to the immediate determination of his articles of clerkship, be admitted and enrolled as an attorney or solicitor; and where such consent is given as aforesaid, and acted upon under this provision by the person hereby made eligible to be admitted and enrolled as aforesaid, the articles of clerkship shall be deemed to have determined as if they had determined by effluxion of time."

(*a*) As to what the candidate must do previously to offering himself for the preliminary or intermediate examination see *ante*, pp. 5 and 9.

And by the 5th section it is provided that the judges may direct that any person having successfully passed any examination now or hereafter to be established in any of the universities above-mentioned, to be specified by order, may be admitted and enrolled as an attorney or solicitor after having been subsequently bound by and having duly served under articles of clerkship to a practising attorney or solicitor for four years, and being examined and sworn.

To carry into effect the 5th section, it is ordered:—

"That from and after the first day of Hilary Term, 1862, every person who before entering into articles of clerkship shall produce to the Registrar of Attorneys a certificate that he has successfully passed the first public examination before moderators at Oxford, or the previous examination at Cambridge, or the examination in arts for the second year at Durham, or the matriculation examination at the Universities of Dublin or London, and has been placed on the first division of such matriculation examination, shall be entitled to the benefit of the 5th section of the Attorneys Act (23 & 24 Vict. c. 127)."

And by the fourth section a *bonâ fide* clerk to a solicitor for ten years may, after serving three years under articles, "and having been examined and sworn as aforesaid, and with the consent in writing (endorsed on his articles of clerkship) of" his principal to whom he may be bound, be admitted an attorney: (23 & 24 Vict. c. 127.) Clerks, however, in return for this, must undergo the preliminary examination in general knowledge as provided by the eighth section, unless a dispensation be obtained.

And by sect. 12, where the term of service, whether it be for three, four, or five years, expires in any vacation, the clerk may offer himself for examination in the term preceding such vacation, and be admitted on the expiration of his articles.(*a*)

In the Incorporated Law Society's edition of this Act it is stated that clerks bound for four years may serve one year with a barrister or special pleader, *and* one year with a London agent. But those bound for three years cannot serve any part of the term with a barrister or pleader, and only one year of it with the London agent.

In future the articled clerk must not hold any other office or employment during his articles, the tenth section enacting that,—

"No person hereafter bound by articles of clerkship to any attorney or solicitor shall, during the term of service mentioned in such articles, *hold any office or engage in any employment whatsoever* other than the employment of clerk to such attorney or solicitor, and his partner or partners (if any) in the business, practice, or employment of an attorney or solicitor, save as by the first hereinbefore-mentioned Act or this Act otherwise provided; and every person bound as aforesaid shall, before being admitted an attorney or solicitor, prove by the affidavit required under section fourteen of the first hereinbefore-mentioned Act that he has not held any office or engaged in any employment contrary to this enactment, and the form of such affidavit as aforesaid shall be varied by such addition thereto as may be necessary for this purpose."(*b*)

It is ordered that the several masters for the time being of the Court of

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(*a*) For the law as to due service under, stamping, and enrolling articles of clerkship, see *ante*, pp. 7 and 8.

(*b*) This section has been construed very strictly. See *Ex parte Peppercorn*, 14 L. T. Rep. N. S. 252.

Queen's Bench, Common Pleas, and Exchequer respectively, together with sixteen attorneys or solicitors to be appointed by a rule of court in every year, are to be the examiners for one year, any *five* of whom, one thereof to be one of the said Masters, shall conduct the examination. Subject to such appeal as we will presently state, no person who shall not have been previously admitted a solicitor of the High Court of Chancery shall be admitted to be sworn an attorney of any of the courts, except on production of a certificate signed by the major part of such examiners actually present at and conducting his examination, testifying his fitness and capacity to act as an attorney; such certificate to be in *force only to the end of the term next but one following the date thereof*, unless such time shall be specially extended by the order of a judge.

If it is wished to get the time extended, the application for the order must be supported by an affidavit showing that the party applying has been engaged in the study and practice of the law since his examination.

The examinations take place in the hall of the Incorporated Law Society of the United Kingdom, in Chancery-lane, four times a year, on some day during term time. They occur about the middle of November, the middle of January, the first week in May, and the first week in June.

NOTICE TO EXAMINERS.—Any person desirous of being admitted an attorney of any of the three courts must give notice to the examiners before the commencement of the term *next preceding* that in which he shall propose to be examined, of his intention to apply for examination, by leaving the same with the secretary of the said society, at their said hall, which notice must also state his place or places of abode or service for the last preceding twelve months, and in case of application to be admitted on a refusal of the certificate, shall give ten days' notice, to be served in like manner, of the day appointed for hearing the same.

The following may be the form of notice referred to in the above rule:—

Notice is hereby given, that A. B., of , whose place [*or* places] of abode [*or* service] for the last preceding twelve months has [*or* have] been at , and who was lately [*or* is now] under articles of clerkship to C. D., of , attorney-at-law,(*a*) intends to apply next term for examination, in order to his being admitted an attorney of Her Majesty's Court of Queen's Bench at Westminster.
Dated the day of , 187 .

NOTICE TO BE LEFT AT MASTER'S OFFICE.—Besides the foregoing notice, it is ordered that *three days* (which means *clear* days) at the least before the commencement of the term next preceding that in which any person not before admitted shall propose to be admitted an attorney of either of the courts, he shall cause to be delivered at the Queen's Bench, Master's office, a written notice, which shall state his place or places of abode or service for the last preceding twelve months, and the name and place of abode of the attorney or attorneys to whom he was articled and assigned (if any such assignment has been made); and the Master is to reduce all such notices into an alphabetical table or tables under convenient heads, and affix the same on the first day of term in some conspicuous place within or near to, and on the outside of, each court.

And such person shall also, for the space of *one full term* previous to the term in which he shall apply to be admitted, enter or cause to be entered

(*a*) If there has been any assignment, then add: "and also under articles of assignment from the said C. D. to E. F., of , attorney-at-law."

in two books kept for that purpose, one at the chambers of the Lord Chief Justice or Lord Chief Baron of the court in which he applies to be admitted, and the other at the chambers of the other judges or barons of such court, his name and place or places of abode, and also the name or names and place or places of abode of the attorney or attorneys to whom he shall have been articled and assigned (if any such assignment has been made).

The following may be the form of the three notices to be left and entered as above directed:—

Notice is hereby given, that A. B., of , whose place [*or* places] of abode [or service] for the last preceding twelve months has [*or* have] been at , and who was lately [*or* is now] under articles of clerkship to C. D., of , attorney-at-law,(*a*) intends to apply next term to be admitted an attorney of Her Majesty's Court of Queen's Bench at Westminster.
Dated the day of , 187 .

A judge at chambers has the power to order the notices to be received by the Masters, although not given within the proper time. The application must be supported by an affidavit showing sufficient cause. Several orders have been obtained on the following affidavit:—

I, A. B., of , in the county of , gentleman, make oath and say as follows:—
1. That I actually and really served and was employed by C. D., of , gentleman, one of the attorneys of Her Majesty's Court of Queen's Bench at Westminster, and a solicitor of the High Court of Chancery, as his clerk, in the practice of an attorney and solicitor, from the day of the date of certain articles of clerkship bearing date the day of , 187 , and made between the said C. D. of the one part, and [*father or guardian*] and myself of the other part, for the full term of five [*or* four *or* three] years, pursuant to the said articles.
2. That I, from misinformation and ignorance, neglected to give the usual and proper notice to the examiners of my intention to offer myself for examination, and from the same cause neglected to leave the usual and proper notice of my proposal to be admitted an attorney of Her Majesty's Court of Queen's Bench at Westminster, at the Master's office, and also neglected to enter the same notice at the judge's chambers, as required by rule of Hilary Term, one thousand eight hundred and fifty-three.
3. That I am desirous of offering myself for examination and admission as aforesaid in term next following, and therefore wish to obtain an order that the said notices of examination and admission may be left and entered at the present time, and have the same force and effect as if they had been left and entered at the time required by the aforesaid rule.
Sworn, &c. A. B.

By Rule H. T. 1853, s. 6, every person proposing to be admitted an attorney of either of the said courts, who shall have given notice of his intention to apply for examination and admission as aforesaid, or as authorised by this rule, and who shall not have attended to be examined, or not have passed the examination, or not have been admitted, may within *one week* after the end of the term for which such notices were given renew the notices for examination or admission for the then next ensuing term, and so from time to time as often as he shall think proper; and that all such renewed notices shall be added to the list of notices of admission and re-admission, and placed upon the first day of the term in the said courts, chambers, and offices, and the applicants named in such renewed notices may be examined in the ordinary way, in pursuance of such last-mentioned notice, but shall not be admitted till the last day of the then term, unless otherwise ordered by one of the said courts or a judge thereof.

(*a*) If there has been any assignment state it as in note to the form of notice to examiners.

It is also ordered that:—

1. Every person applying to be admitted an attorney of any of the said courts pursuant to the said rules, shall, *within the first seven days* of the term in which he is desirous of being admitted, leave, or cause to be left, with the secretary of the Incorporated Law Society, his articles of clerkship, duly stamped, and also any assignment which may have been made thereof, together with answers to the several questions hereunto annexed, signed by the applicant, and also by the attorney or attorneys, London agents, barrister, or special pleader with whom he shall have served his clerkship.

2. In case the applicant shall show sufficient cause to the satisfaction of the examiners why the first regulation cannot be fully complied with, it shall be in the power of the said examiners, upon sufficient proof being given of the same, to dispense with any part of the first regulation that they may think fit and reasonable.

3. Every person applying for admission shall also, if required, sign and leave, or cause to be left, with the secretary of the said society, answers in writing to such other written or printed questions as shall be proposed by the said examiners touching his said service and conduct, and shall also, if required, attend the said examiners personally, for the purpose of giving further explanation touching the same; and shall also, if required, procure the attorney or attorneys with whom he shall have served his clerkship as aforesaid, to answer either personally or in writing any questions touching such service or conduct, or shall make proof to the satisfaction of the said examiners of his inability to procure the same.

4. Every person so applying shall also attend the said examiners at the hall of the said society, at such time or times as shall be appointed for that purpose, pursuant to the said rule, as the said examiners shall appoint, and shall answer such questions as the said examiners shall then and there put to him by written or printed papers, touching his fitness and capacity to act as an attorney, and in the usual business transacted by an attorney.

5. Upon compliance with the aforesaid regulations, and if the major part of the said examiners actually present at and conducting the examination (one of them being one of the said Masters) shall be satisfied as to the fitness and capacity of the person so applying to act as an attorney, the said examiners so present, or the major part of them, shall certify the same under their hands in the following form, namely:—

"In pursuance of the rules made in Hilary Term, 1853, of the Courts of Queen's Bench, Common Pleas, and Exchequer, we, being the major part of the examiners at and conducting the examination of A. B., of, &c., do hereby certify that we have examined the said A. B., as required by the said rules, and we do testify that the said A. B. is fit and capable to act as an attorney of the said courts in the usual business transacted by attorneys."

QUESTIONS AS TO DUE SERVICE OF ARTICLES OF CLERKSHIP TO BE ANSWERED BY THE CLERK.

1. What was your age at the date of your articles?

2. Have you served the whole term of your articles at the office where the attorney or attorneys to whom you were articled or assigned carried on his or their business? and if not, state the reason.

3. Have you at any time during the term of your articles been absent without the permission of the attorney or attorneys to whom you were articled or assigned? and if so, state the length and occasion of such absence.

4. Have you, during the period of your articles, been engaged or concerned in any profession, business, or employment other than your professional employment as clerk to the attorney or attorneys to whom you were articled or assigned?

5. Have you, since the expiration of your articles, been engaged or concerned, and for how long time, in any and what profession, trade, business, or employment other than the profession of an attorney or solicitor?

(Signed.)

QUESTIONS TO BE ANSWERED BY THE ATTORNEY, AGENT, BARRISTER, OR SPECIAL PLEADER WITH WHOM THE CLERK MAY HAVE SERVED ANY PART OF THE TIME UNDER HIS ARTICLES.

1. Has A. B. served the whole time of his articles at the office where you carry on your business? and if not, state the reason.
2. Has the said A. B. at any time during the term of his articles been absent without your permission? and if so, state the length and occasions of such absence.
3. Has the said A. B., during the period of his articles, been engaged or concerned in any profession, business, or employment other than his professional employment as your articled clerk?
4. Has the said A. B., during the whole term of his clerkship, with the exceptions above-mentioned, been faithfully and diligently employed in your professional business of an attorney or solicitor?
5. Has the said A. B., since the expiration of his articles, been engaged or concerned, and for how long time, in any and what profession, trade, business, or employment, other than the profession of an attorney or solicitor?

And I do hereby certify that the said A. B. has duly and faithfully served under his articles of clerkship [*or* assignment, *as the case may be*], bearing date, &c., for the term therein expressed, and that he is a fit and proper person to be admitted an attorney.

(Signed.)

About a fortnight or three weeks before the examination takes place, the candidate will receive at the address stated in his notice for examination, the following intimation, with a copy of the foregoing questions to be answered by himself and principal :(*a*)—

Sir, 187 .

I am directed, by the examiners appointed for the examination of persons applying to be admitted attorneys, to inform you that you are required to attend on the at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery-lane, in order to be examined, The examination will commence at ten o'clock precisely.

I have to remind you that your articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left with me on or before the .

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally ;(*b*) but the articles must be left within the first seven days of term, and answers up to that time. If part of the term has been served with a barrister, special pleader, or London agent, answers to the questions must be obtained from them, as to the time served with each respectively.

If you apply to be examined under the fourth section of the Attorneys Act, 1860, you may, on application, obtain copies of the further questions relating to the ten years' service antecedent to the articles of clerkship; and such questions, duly answered, must be left with your articles, &c., on or before the .(*c*)

On the first day of examination, papers will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law and Practice of the Courts. 3. Conveyancing.

On the second day, further papers will be delivered to each candidate, containing questions to be answered in—4. Preliminary. 5. Equity and Practice of the Courts. 6. Bankruptcy and Practice of the Courts. 7. Criminal Law, and Proceedings before Justices of the Peace.

(*a*) Where there is an assignment, another copy of these questions must be obtained from the Incorporated Law Society, for the answers of the gentleman to whom the articled clerk was assigned. Where a principal improperly refuses to answer these questions, the court will grant a rule *nisi* calling upon him to show cause. And the board of examiners may themselves dispense with the answers of the master on good cause being shown.

(*b*) Where the candidate is under age, but will attain it during the term, he may be examined *de bene esse* during such term.

(*c*) If this has been done at the intermediate examination it need not be again repeated at the final.

Each candidate is required to answer all the preliminary questions (Nos. 1 and 4); and also to answer in *three* of the other heads of inquiry—Common Law, Conveyancing, and Equity.

The examiners will continue the practice of proposing questions in Bankruptcy and in Criminal Law and Proceedings before Justices of the Peace, in order that candidates who may have given their attention to these subjects may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the merits of their general examination.

I am, Sir

Your very obedient servant,

A. B.,

Secretary.

The articles, assignment (if any), and questions duly answered by the articled clerk and his principal, and the certificate of having passed the intermediate examination, must be left at the Law Institution, on or before the day named in the above circular; a receipt for the articles and assignment is given.

CHAPTER II.

MODE OF PROCEEDING, AND DIRECTIONS TO BE ATTENDED TO, AT THE FINAL EXAMINATION.

EACH candidate will (on entering the hall) have a number given to him, and will take his seat at the *end* of the table on which such number is placed.

On the first day a paper of questions will be delivered to him, with his name and number upon it, containing the questions to be answered in writing, classed under the several heads of—

1. Preliminary.
2. Common and Statute Law, and Practice of the Courts.
3. Conveyancing.

On the second day another paper will be delivered to each candidate containing questions in—

4. Preliminary.
5. Equity and Practice of the Courts.
6. Bankruptcy and Practice of the Courts.
7. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the preliminary questions (Nos. 1 and 4); and also to answer in *three* of the other heads of inquiry, viz., *Common Law, Conveyancing,* and *Equity.* The examiners will continue the practice of proposing questions in *Bankruptcy* and in *Criminal Law* and *Proceedings before Magistrates,* in order that candidates who may have given their attention to these subjects may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the merit of their general examination.

The answers under the *above-mentioned heads* are to be written on one side only on *separate* papers for each head; and the answers to each paper should be written *concisely* in a plain and legible manner, and *signed.*

The candidates are to finish their papers of each day by *four* o'clock, but *no answer will be received from any candidate before half-past one o'clock.*

After the examination has begun, no candidate is to leave the hall (without permission obtained from the Examiners) until he shall have delivered in his answers; and any candidate who leaves the hall without permission will not be allowed to return.

No candidate will be allowed to consult any book during his examination, or to communicate with, receive assistance from, or copy from the paper of another; and in case this rule is discovered to be infringed, both such persons will be considered *not to have passed their examination.*

The Examiners require the candidate to "answer the question as directly as he can; and *after* he has thus answered he may illustrate or enlarge upon his meaning, but *a directly correct answer* is all that is required by the Examiners to insure the full number of marks:" (*From the Speech of Master Templar at the Hilary Term's Examination,* 1864.)

The greatest number of marks for any one answer is ten. Therefore, if the candidate answers all the fifteen questions he gets 150 marks. If he gets seventy-five marks in each of the three indispensable branches, he will pass: (*From the Speech of Mr. Cookson, at the Meeting of the Metropolitan and Provincial Law Association, held* 1863.)

A wrong answer will not be considered unfavourable, if it display an acquaintance with the subject. But this, of course, will depend upon the number of correct answers besides; for the Examiners require a majority of the questions in the three indispensable heads to be answered correctly.

Notwithstanding the printed recommendation at the top of the sheets for the answers, to answer every part of the question, still, if the candidate cannot give a direct answer to every part of the question, it will be better to state what he does know on the subject, than to leave it entirely unanswered.

When the candidate has finished his answers, he will call an attendant in the room, who will tie them together with the printed copy of the questions; the candidate will then deliver them and the ticket given on his entrance, to the secretary, at the Examiner's table; whereupon he will receive another ticket, which he is to give to the person at the door when he goes away.

The result of the examination is not made known to the candidate until a few days after the examination, when, if successful, he will receive a printed circular to that effect; if unsuccessful, a written or lithographic one.

APPEAL FROM THE DECISION OF THE EXAMINERS.

In accordance with the stat. 6 & 7 Vict. c. 73, it is ordered that in case any person shall be dissatisfied with the refusal of the Examiners to grant such certificate, he shall be at liberty, within *one month*, to apply for admission, by petition in writing to the Judges, to be delivered to the clerk of the Lord Chief Justice of the Court of Queen's Bench, upon which no fee or gratuity is to be received; which application shall be heard in Serjeants' Inn Hall, by not less than three of the Judges.

Under this rule it has been decided that the Examiners are bound to furnish the clerk with a copy of the questions with his answers. The following is a report of the case deciding the point:—

SERJEANTS' INN HALL, SERJEANTS' INN. DECEMBER 2, 1853.

(Before COLERIDGE, MAULE, and WILLIAMS, JJ.)

Re ——— *an Articled Clerk.*

This was an appeal under the Act of Parliament, 6 & 7 Vict. c. 73, and the rules relating to the examination of persons applying for admission, from the decision of the Board of Examiners, who had refused the petitioner their certificate, for insufficient answers at the Trinity Term Examination, and praying that he might be admitted.

Mr. F. T. Streeten appeared for the petitioner; and *Mr. Wilde* for the Board of Examiners. *Mr. Maugham*, the Secretary to the Board, and the *Appellant*, were also present.

COLERIDGE, J., inquired whether it was the intention of *Mr. Streeten* to argue on the impropriety of the Questions or the correctness of the Answers.

Streeten said, that he should most probably take both points; but he would make a preliminary application to the effect that the petitioner might be furnished with copies of the answers he had given to the questions that had been placed before him at the Examination. This application had already been made at judge's chambers, but had been adjourned by Mr. Justice Crompton, on the ground that he had no jurisdiction in

the matter, and that it could not be decided except by three of the learned Judges assembled at Serjeants' Inn Hall.

Wilde said he must object to this application being granted, and for the same reason that he had done so at chambers, namely, the great inconvenience the establishment of such a precedent would give rise to, and, also, from the absence of any authority in support. The learned counsel then proceeded to quote the case of an articled clerk who had been rejected at his examination, and had appealed to the Judges. No copies of the answers had been granted in that case to the appellant, but having been furnished to the Judges, they perused them and gave their decision that the candidate was well rejected. This case occurred some years ago.

COLERIDGE, J., said, that no doubt the standard of the Examination had been raised since that case, and that what then would constitute a rejection, might not be so important as a postponement at the present period. The object was to improve the attorney.

Wilde said, that the standard of the Examination had remained the same. The inconvenience of the precedent would be very great. At the termination of each examination, it would be the object of every candidate to obtain copies of his answers, and by the rejected candidate comparing his with those of the successful clerk, the former would fancy himself aggrieved, and appeals would become more frequent.

Streeten said, that he made this application under the 3rd rule of the Rules of Court as to the Examination and Admission of Attorneys (Hilary, 1853), framed by the Judges pursuant to the 6 & 7 Vict. c. 73, whereby it is ordered "that in case any person shall be dissatisfied with the refusal of the Examiners to grant such certificate (of fitness and capacity) he shall be at liberty, within one month, to apply for admission, by petition in writing to the Judges," &c. Now, the word *dissatisfied*, would seem to imply that copies of the answers were to be furnished, or how was the candidate to ascertain whether he was dissatisfied or not, or how could he obtain advice upon the matter? He (Mr. Streeten) might, on perusal of the answers, advise the withdrawal of the petition; but until he had an opportunity of seeing them, he could form no correct or satisfactory opinion of his client's case. As regarded the argument of inconvenience put forward by the Board of Examiners, this was no answer, if their Lordships should be of opinion that he was entitled to his application. Every candidate would not be furnished with copies of the answers, the advantage was only intended for those who had been rejected, so that there would be no comparison of answers between the successful and unsuccessful candidates.

Wilde said, that the petitioner had sworn in his affidavit that he was dissatisfied, so that Mr. Streeten's argument upon this point would fail.

COLERIDGE, J., said that the judgment of a young man, upon such a point, was very different from what probably would be the opinion of his master or adviser, and he (the student) might be counselled that there were no sufficient grounds for his pursuing the appeal.

MAULE, J., said that the master would have no means of ascertaining whether his pupil had passed a creditable examination or not. A youth might successfully undergo a strict personal examination from his master, but still his answers to the Questions of the Board of Examiners might be such as would warrant his rejection.

WILLIAMS, J., having concurred, copies of the Questions and Answers were ordered to be given.

Notwithstanding this right of appeal, we should not advise any rejected candidate to avail himself of it, whatever his own opinion may be; for although there have been several appeals, none of them as yet have been successful, at least not to the author's knowledge.

CHAPTER III.

PROCEEDINGS TO BE TAKEN SUBSEQUENT TO THE EXAMINATION.

THE successful candidate can obtain the Examiners' certificate on the day following the receipt of the notice informing him of his having passed the examination.

When the Examiners' certificate has been obtained, affidavits of due service of clerkship, of having given the notices of admission, and of the payment of the stamp duty must be prepared.

The following may be the form of the affidavit of service under articles and of having given the notices:—

In the Queen's Bench.

I, A.B., of gentleman, make oath and say,

1. That I have actually and really served, and was employed by C. D., of , gentleman, one of the attorneys of Her Majesty's Court of Queen's Bench at Westminster, and a solicitor of the High Court of Chancery, as his clerk in the practice of an attorney and solicitor, from the day of the date of the articles of clerkship bearing date the day of , 18 , for the (*a*) full term of five [*or* four, or three] years, pursuant to the said articles hereunto annexed.

2. That I did, before the commencement of term, now last past, enter in the two books kept for that purpose, at the chambers of each of the judges of this honourable court, a notice in writing, containing my name and then place of abode [*or* service,] and the name and place of abode of the said C. D.,(*b*) my said master, purporting that I intended to apply in the then next term to be admitted an attorney of Her Majesty's Court of Queen's Bench at Westminster.

3. That I did also, three days at least previous to the said term, leave a like notice with the clerk of the Masters of this honourable court, containing in addition to the particulars stated in the aforesaid other notices, my place [*or* places] of abode [*or* service] for the last preceding twelve months.

4. That if the said notices or any or either of them were or was afterwards cancelled or defaced, it was done without my privity or consent.

Sworn, &c. A. B.

If the notices have been given by the London agent, and not by the articled clerk, then the affidavit must be either joint or there must be two affidavits; in either case the clerk deposing as to the service, and

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(*a*) If there has been any assignment then, for the words "of five years," &c., substitute the following:—"of years and months, &c., or as the case may be," and add a paragraph to this effect:—

That I was duly assigned for the remainder of the said term of five [*or* four, *or* three] years unto E. F., of one of the attorneys of Her Majesty's Court of Queen's Bench at Westminster, and a solicitor of the High Court of Chancery, and that I have actually served and been employed by the said E. F., as his clerk, in the practice of an attorney and solicitor, from the day of the date of certain articles of assignment bearing date the day of 18 , being the full term of years, month, and day, pursuant to the said articles of assignment hereunto annexed.

(*b*) If there has been any assignment, then, instead of "the said C. D.," say: "as well of the said C. D., as of the said E. F., my respective masters."

the agent as to giving the notices, and both as to the cancellation of the notices.

The affidavit of payment of stamp duty must next be prepared, which may be as follows :—

In the Queen's Bench.

I, A. B., of , in the county of , gentlemen, make oath and say,

That the stamp duty of 80*l.* was paid in respect of certain articles of clerkship, bearing date the day of 18 ., and made between C. D., of , gentleman, one of the attorneys of Her Majesty's Court of Queen's Bench at Westminster, and a solicitor of the High Court of Chancery of the one part, and [*father or guardian*], and myself of the other part, as appears by the stamp impressed thereon, and that the said articles were duly executed by the respective parties thereto, on the day of the date thereof, and were duly registered on the day of 18 , as appears by the certificate of the proper officer endorsed thereon.(*a*)

Sworn, &c. A. B.

These affidavits must be signed and sworn, and to the first of them the articles of clerkship and any assignment of them that may have been made, must be annexed, marked as an *exhibit* or *exhibits*.

The next step is to obtain the affidavit of due execution of the articles, which was filed in the Master's office within six months after their execution. When this is done, all these documents and the Examiners' certificate are left with the clerk at the Judge's chambers, and the Judge's fiat for the admission is obtained, and the affidavit of due execution of the articles of clerkship and assignment (if any), and the Examiners' certificate are returned. The fiat and affidavit of due execution, the Examiners' certificate, and the form of admission duly stamped and filled up are lodged at the Master's office the day before the admission. On the day of admission the candidate attends in the Bail Court at Westminster, at half-past nine, and there takes the necessary oaths. The admission, duly signed by the Judge before whom the clerk is sworn, and the Examiners' certificate are then obtained. The roll of the court must then be signed, and the admission taken to the Masters' clerk, who will enter it on the roll of attorneys.

The next step is to get admitted in the Court of Common Pleas and Exchequer, which is done by taking the Queen's Bench admission to the Masters' offices of these respective courts in Chancery-lane and Stone-buildings, Lincoln's-inn, and signing their respective rolls.

We have now detailed the proceedings necessary to be taken to get admitted in each of the three Superior Courts of Common Law. It is also usual for gentlemen about to practise in the country to endeavour to get themselves made commissioners to take common law affidavits, but it is for the attorney to consider whether he will incur the extra costs occasioned thereby, and for which he may never obtain an adequate return.

The Lord Chief Justice of the Common Pleas exercises a discretion in granting commissions to take acknowledgments of married women under the stat. 3 & 4 Will. 4, c. 74, and they are not granted until the attorney has been several years in practice.

After the admission in the common law courts the next step is to get admitted in the Court of Chancery. For this purpose a day (usually the day following the admission in common law) is appointed by the Master of the Rolls, notice of which is posted in the Rolls Court

(*a*) If there has been any assignment state the payment of the duty thereon, and of its having been registered, in a like manner.

in Chancery-lane, and otherwise made known to the person applying to be admitted, on which he is to attend and be sworn.

Commissions to administer oaths in Chancery are granted by the Lord Chancellor, but not till the solicitor has been several years in practice.

After the admission in the Court of Chancery you may be admitted in the Court of Bankruptcy, on production of the Chancery admission, or on affidavit that you have been duly admitted, and then signing the roll by yourself or London agent.

THE CERTIFICATE.

Notwithstanding the admission in both the courts of law and equity, yet no person can practise until he has obtained his annual certificate, under a penalty of 50*l.*; and is also unable to recover any costs for business done whilst uncertificated.

For the purpose of obtaining the certificate, it is necessary in the first place to deliver to the Registrar of attorneys a declaration containing the party's name and place of residence, the court, or one of the courts of which he is an attorney, and when admitted; and if he is entitled to the certificate, the Registrar will then give him one; and upon producing it at the Inland Revenue Office, Somerset House, and paying the duty, the stamped certificate will be granted.

The certificates expire on the 15th of November in each year, no matter when granted, but until the 16th of December following is allowed to renew them, and if renewed before that day they relate back to the 15th of November; if renewed on a subsequent day it will not so relate back, but the attorney is uncertificated during the period that may elapse between the 15th of November and the day of renewal.

By the stat. 6 & 7 Vict. c. 73, it is provided that if any attorney neglects to procure his annual stamped certificate within the time limited by law, the Registrar of Attorneys and Solicitors is not afterwards to grant a certificate to such attorney without the order of the court or a judge so to do (see sect. 25): and when an attorney has neglected to take out or renew his certificate for one whole year, it is enacted that the judges should have means of inquiry as to the circumstances under which he has omitted so to do, and as to his conduct and employment during such time.

By rule of Hilary Term, 1853, it is accordingly ordered: 1. That after the last day of Trinity term, 1853, every person who shall intend to apply on the last day of term, or in vacation, for such order, shall, three days [exclusive of and not including Sunday] at the least, previous to the first day of the term, on the last day of which the application is intended to be made, or, in case the application is to be made in vacation, shall, previous to the first day of the preceding term, leave at the office of the masters of the court in which he intends to make the application, a notice in writing, containing his name and place or places of abode for the last preceding twelve months; and that before the said first day of term he shall enter or cause to be entered a like notice in two books kept for that purpose, one at the chambers of the lord chief justice or chief baron, and the other at the chambers of the other judges or barons, and shall before the said first day of term cause to be filed the affidavit upon which he seeks to obtain or renew his said certificate, at the office of the masters aforesaid, and a copy thereof to be also left at the chambers of the Lord Chief Justice of the Court of Queen's Bench.

2. The master shall reduce such notices into alphabetical order, and add the same to the list of admissions and re-admissions, and the order for granting the certificate shall be drawn up on reading such affidavit of such copy having been left in compliance with this rule.

3. A summons shall be served upon the Registrar of Attorneys, calling on him to show cause within ten days why such certificate should not be issued; and if no cause be shown to the satisfaction of the Judge an order may be made for issuing such certificate, if the Judge shall think proper.

LIST OF FEES PAYABLE.

	£	s.	d.
Stamp on articles of clerkship	80	0	0
On any counterpart or duplicate thereof	0	5	0
On any fresh articles or assignment for the remainder of the term ...	0	10	0
Oath on affidavit of due execution	0	1	0
Same if any assignment	0	1	0
On filing in the Master's office any affidavit of due execution of the articles of clerkship and assignment (if any), and for entering and indorsing the same	0	5	0
On leaving notice of admission at the Master's office	0	2	0
On leaving articles of clerkship, assignment (if any) and the questions and answers as to due service, &c., at the Law Institution ...	0	15	0
For Examiners' certificate	3	3	0
Oath on swearing affidavit of service of clerkship, and of having given the notices	0	1	0
Exhibits to same, each	0	1	0
Oath on swearing affidavit of payment of stamp duty	0	1	0
On filing these affidavits, each	0	1	0
On searching for and delivery of affidavit of execution of articles of clerkship	0	2	6
Stamp on Queen's Bench admission	25	0	0
On leaving same with the Master's clerk...	0	2	0
Judge's fiat	1	0	0
On signing the roll in the Queen's Bench...	0	6	0
Same in Common Pleas(*a*)	0	5	0
On admission in Chancery	2	0	0
On admission in Bankruptcy	0	6	0
Commission for taking affidavits in Queen's Bench	1	14	0
Same in Common Pleas	1	13	0
Same in the Exchequer	1	13	0
Stamp on being made a Commissioner to administer oaths in Chancery	1	0	0
Registrars' certificate	0	5	0
Annual certificate to practise within ten miles of the General Post Office in London for the first three years	4	10	0
For every subsequent year...	9	0	0
Annual certificate to practise more than ten miles from the General Post Office, London, for the first three years	3	0	0
For any subsequent year	6	0	0

(*a*) There is no payment on signing the roll in the Exchequer of Pleas.

QUESTIONS

ASKED AT THE

PRELIMINARY EXAMINATIONS, OR EXAMINATIONS IN GENERAL KNOWLEDGE.

SUBJOINED will be found sets of examination papers asked at these examinations, which will give the candidate a fair insight into the nature of the examination he has to undergo.

PAPER No. 1.

Reading and Dictation.

1. Reading about twelve lines from a Roman History.
2. Writing from dictation taken from a history.

English Grammar.

1. Write down the names of the letters of the English alphabet; how do you account for the name of the letter "izzard"?
2. Give rules for syllabification or the division of words into syllables in English; apply them to the words "colonel," "outrage," "venison," and apply in each case the etymology.
3. In what respect has the English language been considered redundant, insufficient, inconsistent?
4. Explain the use and origin of the English articles. Under what part of speech may they be placed? Account for the use of the definite article in this phrase: "When I got to the bottom of the well, I heard a voice from the top."
5. What is "the" before a comparative?
6. How can you recognise adjectives derived from nouns; nouns derived from adjectives; verbs derived from nouns; adverbs derived from pronouns? Give an instance of an adjective derived from a preposition.
7. What is the force of "as" when preceded by "such?"
8. Explain fully the various uses of "it;" when was it first used in English, and how had its place been previously supplied?
9. Correct, or justify, the following, and give in each case your reason:
   "All ye saints of his."
   "If thou be'est he."
   "Whom do you think that I am?"
   "Him thought he by the side of Cherith stood."
   "What shall he say since silent now is he who when he spoke all things would silent be?"

10. Parse the following:

(1.) "Were I Brutus and Brutus Antony,
There were an Antony would ruffle up your spirits."

(2.) "That we may daily endeavour to follow his blessed footsteps.'

(3.) "The examination over we got us some luncheon."

English Composition.

Write a short English composition on one of the following subjects:

A short account of your own life; the school you were at; or a short essay on

"The stately homes of England
How beautiful are they."

Arithmetic.

1. Reduce and express $1 + \frac{4}{11} - \frac{7}{17} + \frac{2\frac{3}{4}}{19}$ to its simplest form.

2. What is meant by a scale of notation? Express 323 on the Senary Scale.

3. What number is it which divided by 23 gives a remainder 22 and divided by 27 gives 26?

4. Divide 46 into two parts that one being divided by 7 and the other by 3 the quotients may together equal 10.

5. A person buys 33 geese for 10*l.*, at how much per head must he sell them to gain 10*l.* per cent.?

6. Explain the rule for proving the correctness of the result of the multiple of two numbers by casting out the nines, and apply to the following: $3478 \times 6236 = 23372528$.

7. What length must be cut from a board $9\frac{1}{4}$ inches wide so that it may contain a square foot?

8. Three drawers contain money; 1 and 2 together 8023*l.*, 1 and 3 are 9134*l.*, 2 and 3 are 10,245*l.* How much in each drawer?

9. Divide 3752 into four parts that the second be three times the first, the third double the second, and the fourth four times the first.

Geography.

1. Give the capes, promontories, islands, &c., of Europe.

2. Trace the course of the Mersey, Humber, &c.

3. Trace the course of the Garonne, Seine, &c., with the towns on their banks, &c.

4. Define the formation of Italy, with its rivers, lakes, &c.

5. Where are the following towns, and name any associations connected therewith: Bannockburn, Bordeaux, Hexham, Dunbar, Glencoe, &c., &c., &c.

6. Where are the following manufactures carried on: silk, linen, leather, glass?

7. The bays, promontories of England and Wales.

8. Draw a map of Denmark defining any town noticed in the present war.

9. Draw a map of Austria, with the German States, &c., defined.

English History.

1. What was the title of Henry IV. to the throne of England (and date)?

2. What was the most important constitution of the Saxons?

3. Who was Stephen and whom did he succeed (with date)?
4. Several battles, on what occasions were they fought, and by whom?
5. Several Acts of Parliament, when passed, in whose reign, and at what date?

Latin—Elementary Knowledge of.

1. What are the principal rules of Latin genders?
2. What was originally the case ending of the genitive of the first declension?
3. Of what substantives are the following genitives?—carnis, senis, farris, ossis, eboris, muris.
4. Give the rules for the formation of degrees of comparison in Latin, and add six instances of irregular formations.
5. Give the perfects of the following verbs:—parco, sterno, pello, gigno, tundo, demo, tango, audeo, pascor, fero, apiscor.
6. Give the rule for the use of qui, with the subjunctive.
7. What adverbs take a case?
8. Translate the following:
   (1.) Sed plerique perverse, ne dicam impudenter, amicum habere talem volunt, quales ipsi esse non possunt, quæque ipse non tribunt amicis, hæc ab eis desiderant. Par est autem primum ipsum esse bonum virum, tum alterum sui similem quærere.
   (2.) Facile omnes quum valemus recta consilia ægrotis damus.
   (3.) Urbs quia extrema ædificata est, Neapolis nominatur.
   (4.) Consules triumphantes victore cum exercitu urbem inierunt.

Translation.

The candidate must translate what is required by the examiners from the book selected by the candidate.

PAPER No. 2.

Reading.

Reading aloud half a page from an old history of the "Revolution in England."

Dictation.

(About fifty lines of dictation from Millar's History.)

English Grammar.

1. Divide the alphabet into labial, dental, guttural, lingual, and nasal sounds, and give the reasons for such division.
2. Name the parts of speech, and divide them into the least number of classes so as to include all.
3. Give the positive and superlative of "farther," "further," "utter," "more" (and some other irregular adjectives).
4. How do you conjugate English verbs, and which class contains most of the Saxon element?
5. Construct a sentence containing all the different parts of speech.
6. To correct or justify a number of somewhat rare sentences.

7. To analyse eight or nine lines of prose and a verse from the "Burial of Sir John Moore" ("Not a drum was heard," &c.)

(There were a few other questions.)

English Composition.

Write a theme upon one of the following subjects:—Reform Bill of 1866; Life of any English statesman or general; Home Life; School life; Novels; Perseverance. The theme not to be less than two foolscap pages, and need not be more than four pages.

English History.

1. How was each of the following persons connected either by marriage or blood with Emma of Normandy?—(1) Hardicanute; (2) Edward the Confessor; (3) Edgar Atheling; (4) Harold II; (5) William the Conqueror.

2. What were the leading disputes between the clergy and the sovereigns from the time of Dunstan to Henry III.?

3. Write the life of Edward the Black Prince. How was he related to John of Gaunt?

4. Name in succession the wives of Henry VIII., with their destinies and issue.

5. State what you know of Jane Shore, Elizabeth Woodville, and Arabella Stuart respectively. Draw a genealogical map showing the pedigree of the last named lady.

6. What were the principal events in the relation of England with foreign countries during the Commonwealth?

7. Trace the connection between William III. and Mary Queen of Scots.

8. Write the life of one of the following persons:—John Hampden, Sir Walter Raleigh, Marlborough, Monk.

9. What political struggles are associated with each of the following terms?—The Constitutions of Clarendon, Magna Charta, Petition of Right, Bill of Rights, Act of Settlement, Habeas Corpus Act, Reform Bill, 1832.

10. Give a sketch of the political career of Mr. Fox.

Geography.

1. Describe, by means of a map, the continent of Europe. Contrast it with Asia, Africa, and America, in respect of its extent of coast line, and name any inference to be drawn therefrom?

2. What rivers flow into the Mediterranean and Black Seas respectively?

3. What are the great natural divisions of England, and illustrate your meaning by a map?

4. Opposite what counties are Anglesea, Lundy Island, Isle of Wight, Sheppy, Holy Island, and Foulness; and what counties are washed by Morecambe Bay, St. Bride's Bay, Carmarthen Bay, Swansea Bay, and Mount's Bay respectively?

5. Name the river, range of hills, and firth separating England and Scotland.

6. What Scotch counties lie south of Berwick, either wholly or in part? What is the shortest distance between Scotland and Ireland?

7. What lake separates Connemara from the rest of Galway? On what rivers are Dublin, Belfast, Cork, and Limerick respectively? Whether does England or Ireland stretch furthest north?

8. Name the boundaries of Belgium.

9. Describe the course of the Seine and Loire respectively, from the source to the mouth. Name their tributaries and the towns on both banks.

10. Name six French islands in the Bay of Biscay.

11. Name the capes between which the Tagus enters the ocean, and state which of them is the most westerly point of Europe.

Arithmetic.

N.B.—Algebra strictly forbidden, and the working of each sum must be shown.

1. Distinguish between numeration and notation. Write down in figures the following numbers: Three hundred and two thousand and fourteen; twenty millions one thousand two hundred and one; seven hundred and one million one hundred and seventy.

2. State the local value of the figure 9 in the following numbers: 390, 769, 28,976.

3. Express why, in adding up numbers, you begin at the right-hand column.

4. The quotient being 140,974, the divisor 543, and the remainder 257, find the dividend.

5. Reduce 7 men, 12 women, 3 children to an equivalent number of children, supposing 2 women equal to a man and three children equal to a woman.

6. Divide the number 237 into 3 parts; such that 3 times the first may equal 5 times the second, and 8 times the third.

7. What would be the expense of binding 1475 volumes, of which 635 are quartos; the quartos cost 6*s*. 8*d*. a volume, and you may bind 8 octavos for the price of 5 quartos?

8. A fruiterer by selling apples at a guinea a thousand gained 2-7ths of what they cost him. What was the prime cost?

9. A man saves annually one thirty-fifth of his income. This is increased by one-fifth. What portion must he put by in order to save the same sum as before?

Elements of Latin.

1. Of what nouns are the following words the genitive:—cotis, maris, mellis, nivis, boum, carnis, cassidis, litis senis.

2. Write down the perfect tenses active (first person singular) and the supine of ago, fero, pello, and the same forms of the same verbs when compounded with a, ad, cum, per, sub, de.

3. Give all the persons of the future perfect of adsum, possum, volo.

4. What prepositions govern the accusative; what the ablative, and what both in Latin? Do any other indeclinable words govern cases? Give examples.

5. In what cases is "qui" followed by the subjunctive?

6. Translate the following passages: (1.) Dicebat Socrates multos homines propterea velle vivere ut ederant et biberant; se bibere atque esse ut viveret. (2.) Infelix Dido nulli bene nupta marito. Hoc pereunte

fugis: hoc fugiente peris. (3.) Pecuniam in loco negligere maximum interdum est lucrum.

Translation.

About eighty-four lines of translation taken from various parts of the book selected by the candidate.

French.

Translation of a page and a half from "Les Œuvres Choisies de Xavier de Maistre," or about the same quantity from Molière's "Misanthrope."

Grammatical Questions in French.

1. Give six substantives which do not admit a plural in French.
2. Give the feminine of the following adjectives:—sensé, gentil, bref, jaloux, malin, vieux, frais, roux, menteur, oblong, superieur, enchanteur.
3. State some of the rules when the particle "ne" is used in French and not in English.
4. When is the impersonal Il y a, Il y avait, &c. used in French and not in English?
5. Give the infinitive and participle of—taisais, resolurent, luisit, soumissent, fimes, tinrent, offrant, bout, enverrait, vit, nuisirent.
6. Give the English of the following adverbial locutions:—bras dessus bras dessous, tout le bon, le matin de bonne heure, tous les deux jours si le cœur vous en dit, coup sur coup.

Translate in French "The first ray of the morning sun had already gilded the tops of the mountains, and announced one of the finest days in spring, when Milo opened his window. Transported at the sight, and inspired with a divine enthusiasm, he took up his lyre, and sung, 'Can I, ye gods! can I express my transports and my gratitude in strains worthy of you? Nature is displayed in all her beauty; joy and gaiety are everywhere visible. How beautiful is the country! how charming the variegated scenery of spring!'"

PAPER No. 3.

English Grammar.

1. Name the parts of speech. To what number might they conveniently be reduced?
2. What traces of case-endings are preserved in English nouns?
3. State fully how plurals are formed in English.
4. State the rules for the formation of the degrees of comparison. Of what word is "rather" the comparative and "first" the superlative?
5. How are *future* and *contingent* events respectively indicated in English?
6. State fully the forms and uses of the gerund in English.
7. When the idea expressed by a noun is plural and the form singular, what is the number of the verb? Answer the same question when the idea is singular and the form plural.
8. Discuss the uses of "but" and "as."

9. Give a logical analysis of the following passage:

"My way of life
Is fall'n into the sear, the yellow leaf,
And that which should accompany old age,
As honour, love, obedience, troops of friends,
I must not look to have."

English Composition.

1. Write an account either of any tour you have made, or of any public spectacle you have witnessed.
2. Write a critique on the merits of Tennyson as a poet, or on those of Thackeray as a writer of fiction.
3. Discuss the character of *one* of the following:—Henry VIII.; the Duke of Marlborough; Mr. Cobden; Lord Bacon; Hampden.
4. Write a letter, giving a description, either of some great city, or of a fine landscape.
5. Compose an essay on the following subject:—"No man is a hero to his *valet de chambre*."
6. Discuss the influence of photography on the fine arts.

Reading aloud.

(About half a page from an English History.)

Dictation.

English History.

1. Write a short life of King Alfred.
2. Mention the principal provisions of Magna Charta.
3. "In Henry II. the blood of the Saxon race was restored." Explain fully the genealogical grounds for this statement.
4. Write a short life of the Black Prince.
5. For how many years, and in the persons of what kings, was the throne of England filled by Plantagenets; and who was the last person who ever bore that name?
6. Mention the names and specify the fates of Henry VIII.'s wives. How many of their children came to the throne?
7. Sketch the character of *one* of the following persons:—Cranmer; Raleigh; Falkland; Marlborough.
8. Under what circumstances did William and Mary come to the throne?
9. Who were the parents of George I.? How did he become King of England, and what is his precise relationship to Queen Victoria?
10. Mention the chief provisions of the Reform Bill of 1832.
11. State what you know of the principal incidents in the lives of Mr. Canning, Lord Grey, Lord Brougham, and Mr. Cobden.

Geography.

Define the coast line of Europe.—Name the provinces of Prussia, with their chief towns.—What are the provinces of Switzerland?—How many Cantons are there, and name them?—Which is the largest and which is

the smallest county of England?—Draw a map of England from the North Foreland to Southampton Water, marking the chief headlands and towns on the coast.—Name the three Hanse towns.—Name the tributaries of the Baltic, Adriatic, and Caspian Seas.—What counties does the "Fen district" comprise?—Where are the following places?—Marston Moor, Flodden, Tewkesbury, Bosworth, Trafalgar, Arran, Dolgelly, and Maynooth.

Arithmetic.

1. Write down in figures—Fifty millions three hundred and nineteen thousand and ten; fifteen thousand and fifteen; twenty millions and twenty; one hundred and nine thousand one hundred and nine; eight millions eight hundred and eighty-eight thousand and eighty-eight; eleven hundred and eleven. Give the total of these numbers.

2. A watch gains 2 minutes every 3 hours; when did it begin to gain if at 20 minutes past 10 p.m. it is at 32 minutes past 10?

3. Two pipes pour, one of them 10 quarts, and the other 15 quarts, into a cistern per minute, and fill it in 2hrs. 20min. How long would it take for the first pipe alone to fill it?

4. The distance from A. to B. is 512 miles; the express train runs this distance in 11 hours; the parliamentary train in 17 hours; this last leaves A. at 12, and the express leaves at 4.30. At what o'clock will the express catch the parliamentary, and at what distance from B.?

5. Divide 21,179*l.* among four persons, so that the first may have 365*l.* less than the second; the second 528*l.* less than the third; and the third 756*l.* less than the fourth.

6. If you add a multiplier to a multiplicand, show precisely to what extent you increase the product.

7. Two numbers are such that one-third of the one equals four-fifths of the other, and their difference is 21. What are the numbers?

8. Two workmen do in three days and a half a job which brings them in 46*s.* The first could do the work unaided in five and three-quarter days. How much does each workman do, and what does he earn per day?

9. I buy four apples for $\frac{1}{2}d.$, and I sell them seven a penny. What have I gained when I have sold 3*s.* 6*d.* worth?

Latin, Elements of.

1. Write down the genitives and genders of—lapis, ignis, facies, rubes, domus, fons, ver, grando, humus, caro.

2. Decline through the singular and plural—acer miles; ingens clades; audax consilium.

3. Give the superlatives answering to inferior, prior, veterior, posterior, junior, and the positive adverbs answering to minus, magis, melius, pejus, rarius.

4. Decline the reflexive pronouns and join each case to some verb. Also decline quivis and istic.

5. Write down the perfects (first person singular) and supines of the following verbs:—consulo, demo, pello, meto, emo, volvo, vello, tero, parlo, ardeo, mitto.

6. What cases follow the prepositions, per, sub, super, infra, coram, præ, penes, cis, sine? Compound the prepositions in, sub, ob, ex, cum, with the verbs ruo, moveo, curro, fero, ludo.

7. By what cases are the following notions or questions respectively rendered in Latin? How long? How long before or after? Whither? By what road? When? Within what time?

8. What verbs govern a genitive and an ablative respectively? Construct phrases in illustration of each case.

9. Give an outline of the rules for the subjunctive mood.

Translation.

The candidates were required to construe pieces out of the books they had selected. They had the choice of two authors.

PAPER No. 4.

Reading and Dictation.

(Both from Macaulay's History of England.)

English Grammar.

What is probably the reason of the term *adjective*, and why is it inapplicable to the English language?—What part of speech is "as"?—Why is a *relative* pronoun so called?—Distinguish between an adverb and a conjunction, and give examples of words that are both adverbs and conjunctions.—When is "that" used more properly than "which?—How do you form the plural of words ending in *y*?—Correct the grammatical errors in the following sentences. (There were eight.)—Parse the following sentences:—The Lord help thee in the day of trouble; Full many a flower; They returned him such conditions and such an answer as he wished to receive.

English Composition.

Write an essay on Tact, or Habit is second nature.

Or write in the form of a letter

A description of some game, or
A description of a tour you have taken, or
A description of the last school you were at.

Geography.

1. What are meridians? What do you mean by latitude and longitude?

2. What are the principal islands, capes, promontories, straits, and peninsulas of Europe?

3. What are the western boundaries of Europe?

4. Trace the course of the Elbe, the Po, and the Garonne.

5. Where are the Hartz mountains, &c.?

6. What are the principal ports of England?

7. What seas surround Britain?

8. What are the principal manufacturing towns of England, and their manufactures?

9. What are the principal towns in France?

10. Where are Battle, Malplaquet, Kenilworth, Glencoe, Preston Pans, &c.?

History.

1. Give in order who invaded England up to the twelfth century, with dates.
2. What right did William the Conqueror profess to have to the Crown of England?
3. Why was the battle of the Standard so called, and under what leaders was it fought?
4. What monarch was called Beauclerk, and why?
5. Who married Margaret of Anjou, and who first married Catherine of Arragon?
6. Who were the first and the last of the Stuarts, and by what right did the next monarch ascend the throne?
7. In what battle did Cromwell first come under notice?
8. Give the Duke of Marlborough's battles.
9. Give, with dates, the principal battles in the Peninsula.
10. At what time and why did the crown of Hanover pass from the United Kingdom?

Arithmetic.

11. A few sums in the first four rules, simple and compound.

Latin, elements of.

1. Give the perfect tense and past participle of cano, cœdo, cedo, cadoreor, tollo, gaudeor, &c.
2. Give some verbs which have no supine.
3. Give the construction with oportet, pertinet, licet, &c.
4. Some passages to be translated.

Translation—French.

1. Two long passages to be translated. What is the difference between an, année, jour, journée, matin, matinée, soir, soirée?
2. The feminine of beni, frai, empereur, ambassadeur, &c.
3. Some conjunctions which govern the subjunctive.
4. The indicative mood, present tense, first singular and third plural, and subjunctive mood imperf. third singular and third plural of obtenir, voir, acheter, &c.

PAPER No. 5.

English Composition.

Write an essay, not less than two pages in length, on one of the following subjects:—(1) The Four Seasons: which of them you prefer and why; (2) Pain; (3) Photography; (4) Chess; (5) Dress; (6) Loyalty.

English Language.

1. At what periods more especially were the various elements which make up the English language introduced into this country?

2. Write down the vowel sounds in English, and show how they are represented in writing.

3. Classify the (*a*) letters of the English alphabet; (*b*) In what way might that alphabet be advantageously modified?

4. What is the origin of the common plural suffix *s*? State the principal exceptions in the formation of plurals in English?

5. Whence do we obtain the genitival form indicated by "of"? which genitival form should be used when the possessive is the antecedent to a relative?

6. Define and classify the English numerals.

7. State the rules for the use of *what* and *which* respectively.

8. How is the "subjunctive mood" expressed in English, and by what rules is its use regulated?

9. Discuss fully and illustrate by examples the various uses of *as*.

10. Classify English conjunctions.

11. Explain the construction of *than* in comparative sentences.

12. Explain the construction of the following sentences:—The book is printing; The house is building; He is coming.

English History.

1. Write a life of Egbert, and state what kings were respectively surnamed the Unready, Ironside, Harefoot, Longshanks, Curtmantle, Lackland.

2. State what you know of the origin and contents of the Domesday book.

3. Write a life of Thomas à Becket.

4. What do you know of the "Provisions of Oxford," "Quo Warranto," "Tonnage and Poundage," "Statute of Præmunire," "Benevolences."

5. Write a life of Lady Jane Grey, and state who were the principal promoters of the scheme for bringing her to the throne.

6. Describe the foreign policy of England, its principles and results, in the reign of Elizabeth.

7. Point out the extension given to English commerce and colonization in the same reign.

8. Discuss the case of Sir Thomas Overbury and the Earl of Somerset.

9. What were the principal events in English History during the reign of William III.?

10. State what you know of one of the following:—John Law, Warren Hastings, Addison.

Geography.

1. Describe generally the proportion of land and water on the earth's surface, and more especially the positions of the various continents with reference to the Equator.

2. Describe the general configuration of the surface of Europe.

3. What are the principal headlands on the west coast of England.

4. Draw a map of Scotland, indicating the principal (1) capes; (2) seaports; (3) rivers; and (4) mountain ranges.

5. What are the boundaries of the Empire of Germany as now constituted.

6. Describe the courses of the Rhone, Volga, and the Shannon.

7. What are the principal mountains of France.

8. Where are the following places and for what are they remarkable? Nismes, Crescy, Glencoe, Ardres, Marengo, Sedan, Flodden, Bayeux, Ryswick, Halidon Hill, Najara.

Arithmetic.

1. Write down in figures the following numbers:—Four millions seven thousand and seven; eleven thousand and eleven; three hundred millions and three; one hundred and fifty-one millions six thousand and ninety eight.

2. Show that a number is divisible by nine when the sum of its digits is divisible by nine.

3. A man walks 14 miles a day. How many steps does he take in a week (6 days), each step being 3 feet in length, and 1 mile being 1760 yards?

4. What is meant by "local value" and "scale"? Add to the quaternary scale the following numbers:—1032, 1222, 22,321, 1211, 1002, 12,223, 3232.

5. A footman has 20*l.* a year wages, and stays from 19th of July to the 13th of December. What wages are due to him?

6. In what time will a debt of 19*l.* 12*s.* be discharged by weekly payments of 1s. 9*d.*?

7. A., after doing $\frac{2}{5}$ of a piece of work in 30 days, calls in B., and together they finish it in 6 days. In what time would each do the work separately?

8. A cistern is fed by a spout which can fill it in 2 hours; how long would it take to fill it if the cistern had a leak which would empty it in 10 hours.

Latin.

1. (*a*) Name any four substantives which want the singular number and any four which want the plural number; (*b*) Give six substantives which change their meaning in the plural.

2. Decline aper, mel, mos, nix, hiems, genu, and caro.

3. Write down the perfects and supines of sterno, do, findo, meto, cogo, sumo, orior, fruor, eo, jacio.

4. Decline the imperative of moneo in the active and passive voices.

5. State the construction of impersonal verbs, and illustrate by examples.

6. How are the following circumstances expressed in Latin:—(1) Yes and no; (2) Distance; (3) Time; (4) The place where; (5) The place to which?

7. Give the rules for the construction of ut and qui respectively.

8. What verbs take the (*a*) genitive and (*b*) ablative?

9. Write down the prepositions which govern the ablative case.

10. What is meant by the dativus commodi? Construct examples in illustration.

11. What verbs take a double accusative?

French Language.

1. How is the plural of the following nouns formed:—œil, vœu, clou, animal, joujou, épouvantail?

2. Give the feminine of ambitieux, grave, gai, protecteur, faux, actif.

3. What are the respective significations of chair, mal, plutôt, voie, chaire, malle, plus, tôt, voix.

4. Give the pluperfect indicative of the verb s'élever.

5. Give the infinitive of deçu, gît, déchusse, bous, faudra, absolvous.

6. Give the English of:—

(1) Il y a bien trois ans qu'il est parti.

(2) Il en a usé en homme de bien.

(3) Je suis toujours bien ensemble (?) avec ce monsieur.

(4) Il s'est mis sur son bien dire.

7. Translate:—The education of a gentleman may be divided into three parts, all of great importance to his happiness, but in different degrees. The first part is the cultivation of the mind. The second part of education is to acquire a competent knowledge how to manage your own affairs. The third part is perhaps not less in value than the others. It is how to practice those manners and that address which will recommend you to the respect of strangers.

PAPER No. 6.

English Composition.

Write an essay or letter not less than two pages in length on one of the following subjects:—(1) Your native place; (2) Loyalty; (3) Night; (4) The drama; (5) Novels which you consider the best; (6) Games.

English Language.

1. State fully what distinctions (1) of gender and (2) number are shown in English. Give examples of nouns which are used as plural in sense, without the sign of plurality added to them.

2. Enumerate the principal terminations of diminutives in English.

3. Into what classes may adjectives be divided? How may degrees of comparison be formed in English, and give a list of the irregular formations? How do you account for the superlative form ending in "most?"

4. (*a*) Classify English pronouns, and point out the impropriety with which this designation is often used. (*b*) What is "my" in the expression "my book?" (*c*) Criticise the correctness of the following:—"Pity my sorrows, who am bereaved of my children."

5. What case absolute is there in English?

6. What are impersonal verbs? Have we in English any strictly impersonal forms?

7. What are gerundial infinitives, and how are they distinguished from common infinitives?

8. Classify irregular verbs according to the vowel changes which they undergo?

9. Classify prepositions (*a*) according to their meaning and (*b*) according to their form.

10. Define syntax, proposition, subject, predicate, and copula.

11. When is the subject termed simple, compound, complex? When is it said to be enlarged or extended?

12. Explain the terms apposition, pleonasm, ellipsis.

English History.

1. What are the chief steps by which the royal family may trace their descent from Egbert?

2. State what you know of the purport of the Constitutions of Clarendon and the Assize of Clarendon.

3. Write the life of Thomas à Becket, or Sir Francis Drake, or William III.

4. What causes led to the dissolution of monasteries in England?

5. Explain the terms Benevolences, Habeas Corpus, Præmunire, Frankpledge, Six Articles, Heriots, Five Mile Act.

6. Describe the condition of Ireland in the reign of Elizabeth. What do you know of Poynings Law, the Treaty of Limerick, and the Siege of Derry?

7. What relation was Mary Queen of England to Mary Queen of Scots? and how were they so related?

8. What were the circumstances which led to the American War of Independence?

9. In what battle did Cromwell first come into notice?

10. What were the principal provisions of the Bill of Rights, and in what year was it passed?

11. What were the circumstances which led to the execution of Algernon Sidney?

12. Name the principal legislative enactments during the last fifty years.

Geography.

1. Into what zones is the earth divided, and in which of them is Europe situated? What is the proportion of land to water in Europe?

2. If a person travel from London to Moscow, will his watch appear to have gained or lost? Give a reason for your answer?

3. Describe the course of the Elbe, Garonne, and Po.

4. Name in the order of the importance of their produce those countries of Europe which yield coal?

5. Enumerate the islands on the coast of England and Wales.

6. What are the most northern and southern points of Ireland respectively; and where is the distance between Ireland and Scotland the shortest?

7. What are the boundaries of Switzerland and Portugal respectively?

8. Name the principal harbours of the Mediterranean.

9. Name the counties, capes, ports, and river mouths which you would pass in going from London to Aberdeen by steamer.

Arithmetic.

1. Define numeration. Write down in figures and find the sum of the following numbers:—Fifteen thousand eight hundred and seventy-nine; one hundred thousand one hundred and one; nine hundred thousand and seven; ninety two millions and seventeen; one hundred and eleven thousand one hundred and ten. In what case does it make no difference whether you begin an addition sum at the right or at the left?

2. Point out a method of "proving" a sum in addition by means of subtraction.

3. Explain fully the rule for division, and illustrate by an example.

4. A man who has spent 375*l.* finds he has left 4 times more than he spent. How much had he at first?

5. A work consist of 8 volumes of 650 pages; each page holds 38 lines; each line holds 42 letters. How many letters are there in the

entire work, supposing the work to consist altogether of 84 chapters and each chapter to have a page 5 lines short.

6. A person who requires some work done applies to 3 contractors. The workmen of the first contractor would do it in 10 days, those of the second in 12, those of the third in 15. He resolves to employ $\frac{1}{4}$ of the workmen of the first, $\frac{1}{3}$ of those of the second, and $\frac{1}{2}$ of those of the third. In what time would the work be done?

7. A person leaves $\frac{2}{5}$ of his fortune to A., $\frac{1}{4}$ to B., and the remaining 35,000*l.* to C. What did A. and B. have, and what was his entire fortune?

8. I want to know how many boys are up for an examination. I am told that if there were 11 more the number would be increased by $\frac{1}{10}$. How many boys are there?

9. Seventy shareholders spend 40,000*l.* on a bridge. After 22 years they divide the profits; 6400 persons have traversed it each day and have paid a halfpenny toll. The expenses on this bridge came to 2*l.* per shareholder per annum. What does each shareholder get?

10. A man hires a servant for 90 days; he gives him 3*s.* 6*d.* for every day he does not board him, and 2*s.* a day he does board him. At the end of the time the servant receives 11*l.* 5*s.* How many days was he boarded?

11. A man buys 6 apples for 5 farthings and sells them at the rate of 4 apples for 5 farthings. How many must he sell to gain half-a-crown?

Latin.

1. State the rules for determining gender in Latin.

2. Give the genitive plural of the following nouns:—Gradus, facinus, ædes, mas, iter, sus, caro, falx, ver, aries, clades.

3. Give the comparative and superlative of the following adjectives:—Multus, similis, malus, vafer, parvus, benevolus, dives, nequam, niger, frugi.

4. Give the genitive of ego, nos, is, alius, unusquisque, hi, uter.

5. In construing a sentence, what is the first thing to look for and why? What verbs take the genitive or ablative of the object?

6. Of what verbs are latus sum, tetigi, enecui, arsi, genui, vexi, sivi, ussi, the perfects?

7. Conjugate aio and odi.

8. Explain the use and meaning of the following prepositions:—Præ, infra, sub.

9. Explain the construction of the following:—

(*a*) "Cui bono."

(*b*) "Hæc neque ego neque tu fecimus."

(*c*) "Notus in fratres animi paterni."

10. State generally the construction of time in Latin, and what is the difference between the accusative and ablative of duration.

French Language.

1. Give the singular of: Celles, cheveux, maux, fausses, ceux, cous, bestiaux.

2. Give the feminine of: Quel, mien, grec, coi, bref, mou, bas, dissous.

3. Give the singular and plural of the personal pronouns, il, elle. Decline it.

4. Give the present and past participle of ira, naquit, résous, craindre, connais, plaire.

5. Parse the following: Ce qui importe à l'homme, c'est remplir ses devoirs.

6. Give the English of—

(*a*) On ne peut se passer de moi.

(*b*) Apropos de quoi avez vous fait cela?

(*c*) On n'est pas content de vous tant s'en faut.

7. Translate: On the 18th June, 1815, was fought the ever-memorable battle of Waterloo, in which the British and Prussian armies under the Duke of Wellington and Marshal Blucher totally defeated the French. This mighty conflict will be regarded, in English history, as one of the noblest proofs of British valour and a testimony to the great military talents of the Duke of Wellington.

PAPER No. 7.

English Composition.

Write an essay or letter, not less than two pages in length, on *one* of the following subjects:—(1) Continental Travelling; (2) English Writers of Sonnets; (3) Autumn; (4) Influence; (5) Cave ab homine unius libri; (6) The uses of History; (7) Athletic Sports.

English Language.

1. What are the principles on which a perfect alphabet should be constructed? And show to what extent the English alphabet falls short of this perfection.

2. What are the different ways in which the masculine and feminine genders are distinguished in English? Give examples.

3. Give rules for the formation of the plural of words ending in f, fe, lf, ff, rf. How do you explain the plural meaning of the phrase "horse" and "foot"?

4. State rules for the formation of degrees of comparison in English. What is "most" in such words as "utmost" and "hindmost"?

5. Give the past tense and past participle of the following verbs:—wind, wound, light, win, awake, wax, cleave, bleed, help, gnaw, forsake, hang, sew.

6. Into what classes may adverbs be divided?

7. Write down a list of prepositions formed (1) from substances; (2) from adjectives.

8. Write down the principal rules of syntax.

9. State all you know about the gerund in English—its history, origin, and use.

English History.

1. What were the names of the British tribes with which the Romans were brought into contact, and where were they located?

2. Sketch the history and name the successive monarchs of the kingdom of Mercia.

3. State fully the circumstances which led to the Norman invasion of England.

4. State what you know of Perkin Warbeck.

5. For how many years and in the persons of what kings was the throne of England filled by Plantagenets?

6. Sketch the history of English possessions in France, and give dates at which they were successively lost to the English Crown.

7. Who was Cromwell's wife, what children had he, and what became of them? Give a chronological list, in a tabular form, of the principal events, domestic and foreign, which marked the history of the Protectorate.

8. Write an account of the life of the Duke of Marlborough.

9. When and from whom did England gain possession of Jamaica, Cape of Good Hope, Malta, Gibraltar, and Bombay?

10. Mention the principal legislative enactments of the first fifty years of the present century.

Geography.

1. What is the estimated length of the coast line of Europe? Compare Europe in this respect with the other divisions of the globe.

2. Describe the mountain ranges of France and Spain. Draw a map to illustrate your description.

3. Write as complete a list as you can (with brief descriptions) of the islands of Europe.

4. What are the principal rivers of England and Wales?

5. Write an account of the following counties, indicating the precise boundaries, principal towns and trades in each case:—Staffordshire, Dorset, and Durham.

6. Into how many provinces is Ireland divided? What are their respective limits? Describe the natural features of the surface of Ireland.

7. Describe the course of one of the following rivers from source to mouth, and give the towns on either bank:—the Elbe, Danube, Loire.

8. Draw a map of Italy, with special indications of the (1) courses of rivers, (2) mountain ranges, and (3) sites of principal cities.

9. Where are the following places, and for what are any of them remarkable:—Wantage, Honiton, Agincourt, Louvain, Gratz, Neville's Cross, Guisnes, Flodden, Badajoz, Tewkesbury, St. Valery, Jena.

Arithmetic.

1. Define a "unit," "product," "subtrahend," "dividend," "local value." Distinguish between abstract and concrete numbers.

2. The digits in the units and millions place of a number are 7 and 8 respectively. What will the digits be in the same places when 999,999 is added to the number? What will they be in the same places when 999,999 is subtracted from the number?

3. A quotient being = 5 times the divisor = 7 times the remainder = 105; find the dividend.

4. Sixty men can do a piece of work in 24 days; after 8 days' work, 12 of them leave. Show that the men left can finish the work in 20 days.

5. I divided 120 oranges among an equal number of boys and girls. For every 2 oranges a boy had, a girl had 3. How many boys and girls were there?

6. Four pounds of tea are worth 9lb. of coffee, and 6lb. of coffee are worth 15lb. of sugar. How many pounds of sugar are equal to 56lb. of tea?

7. A man travelled 1056 miles, viz., 275 miles by rail 1st class, double that distance by steamer, the remainder by rail 3rd class. The railway fares were,—1st class, $2\frac{1}{4}d.$ a mile; 3rd class, $1\frac{3}{4}d.$ a mile; the steamer fare was $2d.$ a mile. He took $12l.$ with him. Was that too much or too little? How much?

8. Show that a number is multiplied by 10 by the addition of a cypher to the right.

9. A bag contains a certain number of florins, three times as many half-crowns, and as many fourpenny pieces as equal the number of the other coins. The whole contents of the bag amount to $15l.$ $14s.$ $2d.$ How many of each coin does it contain?

Latin.

1. Give the genitive plural of the following nouns:—socer, arx, amnis, fur, judex, mulier, rete, crinis, cinis, pignus, genu, domus, crus, latus, later, æquor, os, clades.

2. Decline idem, ambo, uter, qui.

3. Give the perfect tense of the following verbs:—cupio, inardesco, sarcio, taceo, cano, tango, loquor, demo, sperno, tero, cumbo, eo, sterno.

4. State generally the construction of time and of place in the Latin language.

5. In what cases does ut take a subjunctive mood and an indicative respectively.

6. What adverbs take a case after them?

7. In how many different ways may the purpose after verbs of motion be expressed?

8. What verbs take the genitive of the object?

9. Write down the prepositions which take the ablative case, and those which take the accusative or ablative. With regard to the latter class, point out the difference of signification involved, according as the case is the accusative or the ablative.

10. How are questions answered in Latin both affirmatively and negatively?

French.

1. Give the feminine of jaloux, majeur, favori, protecteur, trompeur, vengeur.

2. When do "cent" and "mille" take an s?

3. Which interrogative pronoun is always used before a substantive?

4. Give the first person present indicative interrogatively and negatively of "se laver".

5. Give the first person of the subjunctive present of pouvoir, vouloir, savoir, mouvoir, faire, valoir.

6. Give the French of (1) I have just had my dinner; (2) We are going to have French examination; (3) They ought to have worked better; (4) You ought to have been the first.

7. Translate:—A knowledge of living languages serves as an introduction to the sciences. By its means we arrive, almost without difficulty, at the perception of an infinite number of beautiful things, which have cost their inventors long and tedious labour. By its means all ages and countries are open to us. In them we find, as it were, so many masters, whom we may consult at any time; so many friends ready, at all hours, to join in our pursuits.

A DIGEST

OF THE

INTERMEDIATE LAW EXAMINATION QUESTIONS AND ANSWERS.

I. COMMON LAW.

[NOTE.—*The books hitherto used in this branch have been the* 1*st,* 2*nd, and* 3*rd chaps. of Chitty on Contracts, omitting the first section of chap.* 3*, and Smith's Action at Law. At present they are the* 1*st,* 2*nd, and* 3*rd chaps. of Chitty on Contracts, omitting sect.* 1 *of chap.* 3.]

CHAPTER I.

Question.—What does the word "contract" embrace according to English law? (*a*)

Answer.—In its full signification it comprises every description of agreement, obligation, or legal tie whereby one party is bound to another to pay a sum of money, or do or omit to do a certain act; but in its more familiar sense it is most frequently applied to agreements not under seal: (Chit. Cont. 2, 8th edit.)

Q.—How are contracts *ex contractu* classed? State them with reference to their several degrees of superiority.(*b*)

A.—Into three descriptions, viz.—(1) *contracts of record,* such as judgments or recognisances; (2) *specialties,* such as covenants or bonds; (3) *simple contracts,* as bills of exchange, promissory notes, guarantees, &c.: (Chit. Cont. 2, *et seq.,* 8th edit.; Hallilay's Digest, 2, 7th edit.)

Q.—On what ground and in what manner can a contract of record be set aside by one of the parties to it?

A.—It can be impeached and set aside by parties to it for defects apparent on its face, by writ of error: (*Hayward* v. *Ribbons,* 4 East, 310.) But if a judgment has been obtained by an irregularity in practice, or, being regular on its face, it has been fraudulently enforced, the proper course is to apply, by motion, to the court in which it is obtained to set it aside: (*De Medina* v. *Grove,* 10 Q. B. Rep. 152; Chit. Cont. 3, 8th edit.)

(*a*) Twice. [*These references show the number of times the question has been asked.*]
(*b*) Four.

Q.—How are specialty debts incurred?

A.—Specialties are contracts or obligations under seal, which are not merely in writing, but which are *sealed* by the party bound thereby, and *delivered* by him to, or for the benefit of, the person to whom the liability is thereby incurred: (Chit. Cont. 3, 8th edit.)

Q.—What are the requisites to a deed? (*a*)

A.—The chief requisites are writing, sealing, and delivery. At common law, neither a date, nor even signature of the party is necessary. However, signing is rendered necessary by the Statute of Frauds in many cases: (Chit. Cont. 3, 8th edit.; Hallilay's Digest, 229, 7th edit.)

Q.—What is a sufficient delivery of a deed to complete it.(*b*)

A.—Delivery may be without words; or by words only, without any act of delivery: as where a party to an instrument seals it and declares in the presence of a witness that he delivers it as his deed, and yet keeps it in his possession; this alone is a sufficient delivery: (Chit. *supra.*)

Q.—What is the meaning of delivering a deed as an escrow? And to whom must it be delivered?(*c*)

A.—This means that the deed is not delivered absolutely, but conditionally; that is, it is not to take effect as a complete deed until the grantee performs certain conditions. Such a delivery must always be made to a *third party,* and not to the grantee: (Hallilay's Digest, 261, 7th edit.; Chit. Cont. 4, 8th edit.)

Q.—To what documents does the technical doctrine of estoppel apply? (*b*)

A.—In general to deeds and records only; not to simple contracts. Yet statements or admissions in a simple contract are strong *presumptive* evidence against the party making them, although not conclusive: (Chit. Cont. 5, 6, 8th edit.; Hallilay's Digest, 8, 254, 7th edit.)

Q.—Does a deed operate as an extinguishment or merger of a simple contract? if so, state the reason.

A.—It does: for the deed is a security of a higher nature: (Chit. Cont. 6, 8th edit.)

Q.—What is the distinction between simple contract and specialty debts.(*d*)

A.—Simple contract debts are such as arise by writing not under seal, or by mere oral evidence. Specialty debts are such as have become due by instrument under seal. Again, the former require a valuable consideration to support them, the latter do not. The former are statute barred after six years, the latter not until twenty years: (Hallilay's Digest, 2, 7th edit.; Chit. Cont. 3, 4, 8, 8th edit., *et infra.*)

Q.—In what cases had specialty debts priority over simple contract debts?

A.—Formerly in administering legal assets of a deceased person a specialty debt had priority over a simple contract debt. But by the 32 & 33 Vict. c. 46, both are to be treated as standing in an equal degree, and be paid accordingly out of the assets. And no preference is given to specialty claims on a bankrupt's estate; the bankrupt law being founded upon principles of equality: (Hallilay's Digest, 2, 7th edit.)

Q.—Define a simple contract and state its requisites.(*c*)

A.—A simple contract is an engagement between two or more persons, either in writing not under seal, or verbal, whereby in consideration of something done or to be done by the party or parties on one side, the party or parties on the other promise to do or omit doing some act. Its

(*a*) Four. (*b*) Twice. (*c*) Seven. (*d*) Eleven.

requisites are—(1) the mutual assent of two or more persons able to contract; (2) a valuable consideration, which must not be illegal; (3) something to be done which is the subject of the contract: (Hallilay's Digest, 2, 7th edit.; Chit. Cont. 8, 8th edit.)

Q.—What is the rule as to the mutuality of contracts? (*a*)

A.—The rule is that there must be the mutual assent of two or more persons to the terms of the agreement. Notwithstanding this rule it does not follow that every agreement is bad if it wants mutuality. Thus an agreement between an adult and an infant lacks mutuality, yet it is good, and binds the adult, but not the infant. So the Statute of Frauds only requires the contract to be signed by the party to be charged: (Chit. Cont. 8, 13, 15, 8th edit.)

Q.—A party makes a proposal by letter to another, who accepts the proposal with the addition of a new term. Does this amount to a contract? Give the reason for your answer.(*a*)

A.—It does not. The letters will not constitute an agreement, unless the answer be a simple acceptance of the proposal without the introduction of any new term: (Chit. Cont. 10, 8th edit.)

Q.—When a treaty is begun by letter, and an offer made by letter is verbally rejected, is the party making the offer discharged from the written offer?(*b*)

A.—Yes, unless he consent to renew the treaty.

Q.—When a party has made an offer to another by letter, up to what period has the former a right to retract it?

A.—Until both parties are agreed each has a right to withdraw from the negotiation; so that the party may retract his offer before it is accepted, by a communication to that effect to the person to whom made: (Chit. Cont. 11, 8th edit.)

Q.—If A., without any authority to act as B.'s agent, enters into a contract on behalf of B., can B. afterwards adopt that contract; and what is the legal maxim applicable in such a case?

A.—B. may afterwards adopt the contract: the maxim being "*Omnis ratihabitio retro trahitur et mandato priori æquiparatur*": (Chit. Cont. 16, 8th edit.)

Q.—What is the meaning of the word "consideration" in a simple contract? And explain the maxim "*Ex nudo pacto non oritur actio.*"

A.—A consideration is a recompense for making, or motive or inducement to make, a promise upon which the party is charged. The meaning of the maxim is that no action can be brought on a bare agreement, for the performance of which there is no consideration: (Chit. Cont. 16, 8th edit.; Hallilay's Digest, 3, 7th edit.)

Q.—Is a consideration necessary to give validity to all contracts?

A.—No; it is only necessary to give effect to simple contracts, not to deeds: (Chit. Cont. 5, 16, 8th edit.; Hallilay's Digest, 3, 7th edit.)

Q.—What is the distinction between bills of exchange and promissory notes and other simple contracts as to consideration? (*b*)

A.—The difference is this; that in regard to simple contracts, not being bills of exchange and promissory notes, not only must there be a valuable consideration, but that consideration must in general appear affirmatively; but as to bills and notes, although a consideration is necessary it is *presumed* to exist: (Chit. Cont. 17, 8th edit.)

(*a*) Thrice. (*b*) Twice.

Q.—Is a consideration necessary to give effect to bills of exchange and promissory notes?

A.—Yes; for although they *import* a consideration, yet it is necessary that there should be one, as stated *supra.*

Q.—What is a good and what a valuable consideration so far as they relate to deeds? and how do they respectively affect the validity of an instrument as between the parties and as against subsequent purchasers? (*a*)

A.—A *good* consideration consists of natural love and affection, as where a man grants an estate to a near relation. A *valuable* consideration consists of money, marriage, or the like. A good consideration makes the deed binding between the parties—grantor and grantee; but a valuable one makes it good also as against a subsequent purchaser of the property: (Chit. Cont. 18, 19, 8th edit.; Hallilay's Digest, 3, 7th edit.)

Q.—Will a court of law entertain the question how far the consideration expressed in a written contract is adequate or inadequate? Give your reasons.

A.—The court will not entertain such a question; the law having no means of deciding upon this matter; and it being considered unwise to interfere with the facility of contracting, and the free exercise of the judgment of the parties. But the consideration must be of *some* value: (Chit. Cont. 20, 8th edit.)

Q.—In the case of a contract not under seal, is a consideration absolutely necessary to give it validity? and give some instances of a consideration sufficient to support a simple contract.

A.—As before shown, a valuable consideration is absolutely necessary to give effect to such a contract.

The following are instances of valuable considerations:—(1) forbearance to sue for a definite time; (2) entrusting a party with property which he promises to keep safely; (3) an assignment of a debt or right; (4) that which has for its object the prevention of litigation. In fact, it is a general rule that any act which is a benefit to the person promising, or detrimental to him to whom it is made, is a sufficient consideration: (Chit. Cont. 24, *et seq.*, 8th edit.)

Q.—Is the giving up a suit brought to try a question respecting which the law is doubtful, a good consideration to support a simple contract?

A.—Yes: (see *supra.*)

Q.—When is forbearance to sue a valid consideration to support a simple contract?

A.—Forbearance to sue absolutely, for a certain time, or for a reasonable time, of a *bonâ fide* claim, is a sufficient consideration to support a simple contract: (Chit. Cont. 24, 8th edit.)

Q.—Is it requisite that a person who makes a promise in consideration of forbearance to a third party, should have an interest in the transaction?

A.—It is not: (Chit. Cont. 29, 8th edit.)

Q.—Is a forbearance to sue "for a *little* time" a good consideration to support a promise? (*b*)

A.—No; forbearance "for a little time," or "for *some* time," is too indefinite to constitute a good consideration for a contract: (Chit. Cont. 29, 8th edit.)

Q.—Is a moral obligation to pay a demand a sufficient consideration to support an express promise? (*b*)

(*a*) Six. (*b*) Twice.

A.—No; courts of law do not take upon themselves to support moral obligations when no *legal* liability ever existed: (*Beaumont* v. *Reeve*, 8 Q. B. Rep. 483; Hallilay's Digest, 7, 7th edit.; Chit. Cont. 37, 8th edit.)

Q.—If A. has been guilty of a wrongful act or omission which would render him liable in damages to B., and A. promises to pay B. a sum of money as compensation, what consideration is necessary to prevent this from being a mere gratuitous promise?

A.—The promise must be made in consideration of B. releasing his right of action for such damages: (Chit. Cont. 45, 8th edit.)

Q.—Is a promise to pay a debt of another binding without some new consideration?

A.—No. But if credit were originally given to the third person at the promiser's request, this might constitute a sufficient consideration for his subsequent guarantee: (Chit. Cont. 44, 8th edit.)

Q.—When a contract is entered into upon two considerations, one legal and the other illegal, what is the result? Is the contract void or binding in whole or in part? Give the reasons for your answer.

A.—The whole contract is void, whether the illegality exist at common law or by statute; for it is impossible to say how much or how little weight the illegal portion may have had in inducing the execution of the entire contract: (Smith's Cont. 18, 3rd edit.; Chit. Cont. 18, 48, 8th edit.)

Q.—Must the consideration for a promise to answer for the debt of another be in writing?

A.—Not in the case of guarantees made after the passing of 19 & 20 Vict. c. 97: (Chit. Cont. 64, 8th edit.; Hallilay's Digest, 23, 7th edit.)

Q.—What is meant by the consideration in an agreement being executory, and how far does its being so affect the form of declaration?

A.—A consideration is executory when something is to be done after such promise. It must be performed by the plaintiff before his right of action accrues; and the fact of such performance must be averred in the declaration, otherwise it will be bad: (Chit. Cont. 49, 52, 8th edit.)

Q.—Can a stranger to a deed sue upon a covenant in it for his benefit?

A.—As a general rule, a stranger to a deed cannot sue upon it, though the covenant be made expressly for his advantage. But it is otherwise where the covenant runs with the land or with the reversion, and the like: (Chit. Cont. 54, 8th edit.)

Q.—If a promissory note be given for the payment of money at a specified time, can verbal evidence be given to prove that the time of payment is extended?

A.—No: (Chit. Cont. 99, 8th edit.)

Implied Contracts.

Q.—What is an implied contract? and give an instance.(*a*)

A.—It is one which rests merely on construction of law, and in which there is, strictly speaking, no agreement of the parties to the terms by which they are bound. However, it has been said that the chief difference between an express and an implied contract is in the mode of substantiating them. Thus, if I employ a person to do any business for me, or perform any work, the law implies that I contracted to pay him as much as his labour deserves: (Chit. Cont. 55, 56, 8th edit.)

(*a*) Five.

Q.—What is the difference between an express and an implied contract?

A.—An express contract is one in which the terms of the agreement, whether it be by deed or parol, are openly expressed or uttered at the time of the making thereof: (Chit. Cont. 55, 8th edit.)

As to an implied contract, see preceding answer.

Q.—In what cases will a contract be implied from the usage of trade?

A.—When there is a uniform and universal usage of any trade, the law implies on the part of one who contracts upon a matter within such usage a promise for the benefit of the other party in conformity with such usage, provided there be no express stipulation between them inconsistent therewith; as where it is the custom of a trade to give credit for work done, parties are *supposed* to deal on such terms: (Chit. Cont. 58, 8th edit.)

Q.—Can an agreement be established by means of correspondence between two parties; and if so, what is essential to make such agreement binding?

A.—The letters must contain all the terms of the contract; refer to each other, and the acceptance must be a simple acceptance of the proposal without introducing any new terms: (Chit. Cont. 10, 100, 8th edit.; Hallilay's Digest, 343, 7th edit.)

Q.—Is a party liable to be sued on a contract implied by law when he has made a specific contract on the same subject matter? Is there any, and what legal maxim on this point?

A.—No; not even if the express contract may be avoid by fraud, the maxim being "*Expressum facit cessare tacitum*": (Chit. Cont. 62, 8th edit.)

Q.—What simple contracts are required by law to be in writing?(*a*)

A.—(1) under the Statute of Frauds (see *infra*); (2) on the grant of annuities; (3) the sale or transfer of ships; (4) the assignment of copyright; (5) a promise to pay a statute barred debt; (6) a debt contracted during infancy; (7) bills of exchange and promissory notes, and similar negotiable instruments, &c.: (Chit. Cont. 63, *et seq.* 8th edit.)

Q.—What contracts does the 4th section of the Statute of Frauds require to be in writing?(*b*)

A.—Contracts (1) to charge an executor or administrator with damages out of his own estate; or (2) to answer for the debt, default, or miscarriage of another; or (3) upon a contract made upon consideration of marriage; or (4) contracts relating to lands, tenements, and hereditaments; or (5) contracts not to be performed within a year from the making thereof: (Chit. Cont. 65, 8th edit.; Hallilay's Digest, 6, 13, 7th edit.)

Q.—Mention some simple contracts which need not be in writing.

A.—Where the law has made no special provision to the contrary, a simple contract need not be in writing. And therefore a general hiring of a clerk or a contract to serve for an indefinite period, subject to be put an end to at any time upon reasonable notice, or a contract to leave money by will, or to pay money to the plaintiff on the day of his marriage, or on the arrival of a ship, need not be in writing, as the whole contract *may* be performed within a year: (Chit. Cont. 70, 8th edit.)

Q.—If a contract which is not to be performed within a year be by parol, is it binding?

A.—A contract by parol which cannot be performed within a year by either party is bad, as just shown: (29 Car. 2, c. 3, s. 4; Hallilay's Digest, 6, 13, 7th edit.; Chit. Cont. 66, 69, 8th edit.)

(*a*) Four. (*b*) Thrice.

Q.—If A. contracts with B. to hire him for twelve months, the service to commence at the end of a month from the hiring, is a verbal agreement sufficient; and if not, why not?

A.—It is not, for the contract cannot be performed within a year, and such a contract the 4th section of the Statute of Frauds requires to be in writing: (Chit. Cont. 69, 8th edit.; Hallilay's Digest, 6, 13, 7th edit.)

Q.—Is the construction of a written contract a question for the court or jury?(*a*)

A.—For the court. When, however, the contract does not depend *solely* on written documents, the question as to what such contract was is properly one for the jury: (Chit. Cont. 71, 8th edit.)

Q.—Illustrate the maxim "*Verba intentioni debent inservire,*" by the instance given by Dr. Paley.

A.—Temures promised the garrison of Sebastia that if they would surrender no blood should be shed. The garrison surrendered, and Temures buried them all alive: (Chit. Cont. 72, 8th edit.)

Q.—In what sense are words used in a (written) contract to be construed?

A.—Words are to be construed according to their plain, ordinary, and popular sense, unless they have acquired, in respect of the subject matter, a particular sense, as by the usage of trade, or unless the context evidently points out that they must in that particular instance be understood in some other particular sense, in order to carry out the intention of the parties: (Chit. Cont. 79, 8th edit.)

Q.—If a contract is made abroad, and sought to be enforced in this country, is it governed by the law of the country in which it was made or the law of this country?(*b*)

A.—As a general rule by the *lex loci contractus.* But the *practical conduct* of the action is governed by our forms of procedure and practice—the *lex loci fori.* And as to the construction of the contract, even if the parties at the time of making it had in view a different kingdom, then the law of the country where the contract is intended to be executed governs it: (Chit. Cont. 89–92, 8th edit.; Hallilay's Digest, 7, 41, 7th edit.)

Q.—When several persons stipulate for the performance of an act, are they bound jointly or severally?

A.—It is said they are bound jointly, and not severally; and that there must be express words to create a several liability. However, it is also true that, even in the absence of express words, an agreement *primâ facie may* be construed severally, if the interest of either party require it: (Chit. Cont. 95, 8th edit.)

Q.—What are the general rules as to the admissibility of parol evidence to contradict or vary or explain written contracts? if it can be so used, state when.(*b*)

A.—It is a rule of law that parol evidence cannot be received to contradict, vary, or add to a written contract. But such evidence may, in cases of doubt, be received to *explain* such contract; that is, explain a *latent* ambiguity. Thus, if there be a devise or grant of "the manor of A.," the party having two manors of that name, parol evidence is admitted to show which was intended: (Hallilay's Digest, 84, 7th edit.; Chit. Cont. 96–109, 8th edit.)

Q.—Is parol evidence admissible to impeach the consideration of a bill of exchange?(*a*)

(*a*) Twice. (*b*) Thrice.

A.—Although it is a rule that parol evidence cannot be given to contradict or vary a written contract, yet it is always admitted to *defeat* or impeach a written instrument (as a bill or note) on the ground of *illegality, fraud,* or *duress.* But if a bill or note express the consideration for which it was made, evidence cannot be given of a consideration *inconsistent* with those terms: (Chit. Cont. 99, 108, 8th edit.)

Q.—Is a subsequent parol agreement an answer to an action on a deed?

A.—No; because the deed is of a higher nature: (*Letter* v. *Holland,* 3 Term Rep. 590; Chit. Cont. 106, 8th edit.; Hallilay's Digest, 3, 7th edit.)

Q.—In what manner can the liability by deed be varied or discharged?

A.—Only by instrument under seal, as a general rule. But in an action on a *bond* against a surety, the fact that the creditor has by a binding agreement not under seal given the principal debtor further time, may be pleaded at law by way of *equitable* defence to an action against the surety: (Chit. Cont. 106, 497, 8th edit.; 17 & 18 Vict. c. 125, s. 83.)

Stamping Agreements.

Q.—What is the stamp duty on an agreement of the value of 5*l.* or upwards, under the stat. 33 & 34 Vict. c. 97?

A.—The duty is 6*d.*

Q.—Does an authority to pay money require a stamp?

A.—No; and this is so whether the payment is to be made generally or out of a particular fund: (Chit. Cont. 118, 8th edit.)

CHAPTER II.

Question.—Mention those classes of persons who are exempt from liability on their contracts by reason of their incompetency to contract.(*a*)

Answer.—As a general proposition, idiots and lunatics and infants cannot contract except for necessaries. A married woman can only contract so as to bind her husband for necessaries suitable to his station in life. Outlaws and felons cannot contract. The contract of a person made under duress cannot be enforced against him, but it may be enforced by him: (Chit. Cont. 131, *et seq.*, 8th edit.)

Q.—What is the position of a person of unsound mind as regards his liability on simple contracts?

A.—A person *non compos mentis* is liable on simple contracts for necessaries, and for moneys expended in providing him with proper protection and support, if no advantage was taken of his mental incapacity by the person dealing with him: (Chit. Cont. 133–136, 8th edit.; Hallilay's Digest, 390, 7th edit.)

Q.—Is the liability of an infant affected by a fraudulent representation made by him at the time of entering into a contract and believed by the other party that he was of full age?

A.—No; the plea of infancy is still a good answer to the action. Nor can the fraudulent misrepresentation be made the subject of a replication on equitable grounds: a court of equity, however, might grant relief on the ground of fraud: (Chit. Cont. 138, 8th edit.; Hallilay's Digest, 4, 7th edit.)

Q.—For what contracts is an infant liable, and what is the liability of those who contract with infants?

A.—An infant is liable only on a contract for necessaries, unless he confirm it after he attains his majority. But those who contract with infants are bound by such contract, for infancy is a personal privilege, to be taken advantage of by the infant himself: (Chit. Cont. 138, 150, 8th edit.; Hallilay's Digest, 4, 7th edit.)

Q.—Can an infant sue or be sued for a breach of a promise of marriage?

A.—An infant may sue, but cannot be sued for a breach of promise of marriage: (Chit. Cont. 150, 8th edit.; Hallilay's Digest, 4, 7th edit.)

Q.—Is an infant liable for regimentals supplied to him as a member of a volunteer corps?

A.—It seems that he is; at all events in perilous times they were held to be necessaries: (Chit. Cont. 139, 8th edit.)

Q.—If an infant be sent to school by his guardian who dies without having paid for his schooling, who is liable to pay the bill? Give the reason for your answer.

A.—Although an infant is liable to pay for instruction that may profit

(*a*) Twice.

him afterwards, yet, in the case put by the question, it was held that the infant was not liable, as credit was given to the guardian: (Chit. Cont. 140, 8th edit.)

Q.—If one of two contracting parties be an infant and plead infancy, can the plaintiff enter a *nolle prosequi* as to him and proceed in the action against the other, or what course must he take?

A.—The plaintiff cannot do so; he must discontinue his action and sue the adult separately: (Chit. Cont. 146, 8th edit.)

Q.—What is the rule as to contracts entered into by infants; that is, on what contracts are they liable?

A.—An infant is liable on contracts for necessaries suitable to his station in life. At least this is so if the infant is an orphan, or residing at a distance from his parents, and is not provided with necessaries under their superintendence: (Chit. Cont. 146, 8th edit.; Hallilay's Digest, 4, 7th edit.)

Q.—What does the stat. of 9 Geo. 4, c. 14, require to make a ratification binding after full age of a promise or contract made during infancy?

A.—That the ratification be in writing signed by the infant: (s. 5; Chit. Cont. 150, 8th edit.; Hallilay's Digest, 4, 7th edit.)

Q.—Is the rule which renders void contracts with infants reciprocal as between the parties to such contracts, or how otherwise? Give an instance to explain your answer.

A.—The rule is not reciprocal; an infant may sue on contracts entered into with him by an adult, but cannot be sued thereon; for infancy is a personal privilege. Thus, he or she may sue on a breach of promise of marriage, but cannot be sued: (Chit. Cont. 15, 150, 8th edit.; Hallilay's Digest, 4, 7th edit.)

Q.—How far is a husband liable on a contract made by his wife *dum sola;* and in case the wife dies before action brought, what will be the consequence to the husband? (*a*)

A.—Where the parties have been married before 9th August, 1870, the husband is, during *coverture, jointly* liable with his wife upon all the contracts entered into by her before the marriage—*dum sola*—however improvident, even if he had no fortune with her. But upon her death he will no longer be liable unless he administer to her *choses in action* not reduced into possession during the coverture, and then only to the amount recovered. But the husband is not liable on such contracts if married after the above date: (Chit. Cont. 153, 8th edit.; Hallilay's Digest, 5, 7th edit.; 33 & 34 Vict. c. 93, s. 12.)

Q.—What is the general rule as to the liability of the husband on his wife's contracts during coverture entered into without his authority, either express or implied?

A.—A married woman cannot bind her husband by her contracts without his authority, precedent or subsequent, express or implied, *except for necessaries* suitable to her husband's rank in life; for, for this latter purpose she is his agent: (Chit. Cont. 155, 8th edit.; Hallilay's Digest, 5, 7th edit.)

Q.—What is a factor, and what a broker?

A.—Both factors and brokers are mercantile agents; but a factor is entrusted with the possession and apparent ownership of the goods to be sold by him for his principal; whereas a broker has not such possession,

(*a*) Twice.

but is merely empowered to effect contracts of sale or purchase on his principal's behalf: (Chit. Cont. 195, 8th edit.)

Q.—What is the meaning of a *del credere* commission? and how does it affect the responsibility of an agent acting under it?

A.—The expression *del credere* signifies a *guarantee.* Such an agent for a higher commission than is usual guarantees (as a surety) the due payment to his employer of the price of the goods sold in any event: (Chit. Cont. 195, 510, 8th edit.; Hallilay's Digest, 14, 7th edit.)

Q.—Can an infant or *feme covert* act as an agent? Illustrate your answer by quoting the leading maxim on the law of agency?

A.—An infant or *feme covert* may be an agent, the maxim being *Qui facit per alium facit per se*: (Chit. Cont. 197, 8th edit.)

Q.—In what cases will a subsequent ratification of an agent's authority be equivalent to an original authority?

A.—If an agent exceeds his authority, the principal will nevertheless be bound by subsequently recognising or assenting to the agent's contract or act. The maxim being *Omnis ratihabitio retro trahitur et mandato priori æquiparatur.* But where the party making the contract had no authority to contract for the third person, and did not *profess* to act for him, it seems the subsequent assent of the third party does not bind him: (Chit. Cont. 16, 202, 203, 8th edit.; Hallilay's Digest, 15, 7th edit.)

Q.—What is the general rule as to the personal liability of an agent for another on contracts entered into by him for his principal? *(a)*

A.—The agent is personally liable (1) when he pledges his own personal credit; or (2) conceals his principal; or (3) where he contracts as agent, yet in such terms as to bind himself, as when he covenanted "for himself, his heirs," &c.; or (4) where he exceeds his authority; or (5) fraudulently misrepresents the extent of his authority: (Chit. Cont. 210, 213, 8th edit.; Hallilay's Digest, 16, 7th edit.)

Q.—State cases in which agents may sue in their own names.*(a)*

A.—If an agent contracts in his own name for an undisclosed principal he may sue in his own name thereon. And even where he contracts *as agent,* yet if he has some *beneficial interest* in the completion of the contract, *e.g.*, in respect of commission; or a *special property* or interest in the subject matter of the contract, as in the case of a factor, a carrier, a warehouseman, or an auctioneer, he may sue in his own name, *unless* the principal elects to do so in his name: (Chit. Cont. 214, 8th edit.)

Q.—How is a partnership usually constituted between the parties themselves?

A.—A partnership is usually constituted between the parties themselves by an agreement between them to share the profits and losses of their joint undertaking, although their shares may be unequal, or one of them may have no direct interest in the capital, or may have no right to any definite aliquot proportion of the profits: (Chit. Cont. 216, 8th edit.; Hallilay's Digest, 17, 7th edit.)

Q.—What is the general rule by which the existence of a partnership may be tested?

A.—As regards third parties, persons become partners if they share the profits of a concern. But an advance of money by way of loan on condition of obtaining a rate of interest varying with the profits, or obtaining a share of the profits, will not of itself constitute the party advancing the

(*a*) Twice.

money a partner as regards third persons: (28 & 29 Vict. c. 86; Chit. Cont. 220, 225, 8th edit.; Hallilay's Digest, 17, 149, 7th edit.)

Q.—Can one partner sue his co-partner at law for money received by the latter for the use of the firm?

A.—He cannot do so; for it is a rule of law, subject to a few exceptions, that one partner cannot sue his co-partner in respect of the partnership accounts, or in any matter connected with the partnership transactions: (Chit. Cont. 229, 230, 8th edit.; Hallilay's Digest, 18, 7th edit.)

Q.—State when one partner can bind his co-partner by a promise, which promise they have mutually agreed not to make.

A.—If the promise has reference to and comes within the scope of the partnership business, it will bind the firm. As where two horse dealers were partners and agreed between themselves never to warrant a horse, and one does nevertheless warrant a horse belonging to the partners, the other partner is bound by the warranty: (*Sandelands* v. *Marsh*, 3 Barn. & Ald. 673, 679; Chit. Cont. 232, 233, 8th edit.; Hallilay's Digest, 18, 7th edit.)

Q.—What requisites must be observed in order to render an executor liable out of his own estate for a debt due from his testator?

A.—The promise must be in writing signed by the executor or his agent, thereunto lawfully authorised (29 Car. 2, c. 3, s. 4), and be made on a new consideration, which must appear on the face of the writing: (Chit. Cont. 249, 8th edit.)

Q.—When money is due on a contract made with an executor, what is the rule applied to ascertain whether he can sue for it in his own representative capacity?

A.—Whether the money when recovered will be assets; as when he sells the testator's goods after the testator's death: (Chit. Cont. 253, 8th edit.)

Q.—Does the right of action vest in the executor or administrator from the time of the testator's death, or from the time of his obtaining probate or letters of administration?

A.—From the time of the death of the testator or intestate, and not from the time of his obtaining probate or letters of administration: (Chit. Cont. 254, 8th edit.)

Q.—Can a *cestui que trust* in any and what case sue his trustee at law in respect of trust money in the hands of the trustee?

A.—So long as no other relation exists between the parties but that of trustee and *cestui que trust*, no action lies by the latter against the former. However, when the trustee, by stating an account with the *cestui que trust*, admits that he holds a sum of money in his hands payable to him absolutely, then he is liable in an action to the *cestui que trust* for money had and received, and for money due on an account stated: (Chit. Cont. 264, 265, 8th edit.)

CHAPTER III.

Question.—Define a sale of goods.

Answer.—A sale of goods is the transmutation of the property from one man to another in consideration of some price, to be paid in money: (Chit. Cont. 350, 8th edit,)

Q.—How will the sale of a specific chattel affect it without delivery if sold for cash; and how if sold on credit; and upon whom does the loss fall in the case of the destruction of the thing sold by accidental fire after a sale or before delivery? (*a*)

A.—The sale of a *specific chattel* passes the *property* therein to the buyer, without delivery, whether sold for cash or on credit, and the purchaser must bear the loss happening to the article, although it be still in the possession of the vendor.

Q.—What will vest the property in goods in the vendee when there is no written agreement, and the goods have not been delivered? (*b*)

A.—If the sale is of *specific* goods on *credit* to be delivered forthwith, and the price does not amount to 10*l.*, the *property* passes to the vendee immediately the bargain is struck without delivery.

If the sale be of specific goods for ready money, then, if part of the goods are accepted and received; or something given by way of earnest, or in part payment; or if under 10*l.*, if the goods or price be *tendered*, the property in the goods vests in the buyer.

If the sale is not of specific goods, no property passes until the goods are ascertained and ready for delivery: (Chit. Cont. 350, *et seq.*, 8th edit.)

Q.—When is the property altered by the sale of a specific chattel, and when by the sale of goods part of a larger bulk?

A.—The sale of a specific chattel will immediately pass the property to the vendee. But no property passes in goods part of a larger bulk until the vendor has appropriated the specific quantity sold for the benefit of the vendee, and the latter has assented thereto, and upon the terms of the vendor: (Chit. Cont. 353, 8th edit.; Hallilay's Digest, 13, 7th edit.)

Q.—When goods part of an entire bulk are sold, what is the rule as to property before they are separated and distinguished?

A.—The property does not pass; therefore, if the goods are destroyed the loss falls upon the vendor: (Chit., *supra.*)

Q.—When a horse is sold at a fixed price, in whom is the property vested before delivery?

A.—The *property* in the horse immediately on the sale passes to the purchaser, though the right of possession may still be in the vendor: (Chit. Cont. 350, 8th edit.)

Q.—If a man sells a horse for money, upon what act of the buyer is he bound to deliver him? State also when the right to bring an action of debt will accrue; and in whom does the property in the horse lie after the sale but before delivery? (*b*)

(*a*) Thrice. (*b*) Twice.

A.—Irrespective of the Statute of Frauds, if one sells a horse for money and the buyer tenders the money, and the vendor refuses it, the buyer may take the horse or bring an action of detinue. And though the vendor may keep the horse until he is paid, yet he can bring no action of debt until he delivers the horse, but the property in it passes by the bargain to the buyer: and if the horse dies the vendor may still sue the buyer: (Chit. Cont. 351, 8th edit,)

Q.—If A. employ B. to make a barge, and pays him money on account, in whom is the property of the barge before the delivery to A.?

A.—In the vendor, even though the money paid be equal to the price and his name painted on the vessel by the builder; for a contract for the making of a chattel does not vest the property in the chattel when completed, in the person who gave the order: (*Wilkins* v. *Broomhead*, C. M. & G. 963; *Mucklow* v. *Mangles*, B. Taunt. 318; Chit. Cont. 356, 8th edit.: but see *Carruthers* v. *Payne*, 5 Bing. 270.)

Q.—What is the effect at law, and what in equity, of a grant of goods not in existence at the time of the grant?

A.—At law a grant of goods not in existence at the time of the grant is void, unless the grant be ratified by the grantor after he has acquired the property in the goods. But in equity, if there has been any consideration for the grant, and the grantor afterwards becomes possessed of property answering to the description, the contract will be enforced, and the beneficial interest will pass immediately on the property being acquired: (Chit. Cont. 355, 8th edit.)

Q.—What is the effect of a sale of goods by a wrongful possessor?

A.—The general rule is, that a sale of goods by a wrongful possessor does not transfer the property therein to another, unless the sale is begun and perfected in market *overt*. If the goods have not been sold in market *overt*, and were stolen from the owner, he may sue the buyer, though innocent, although no steps have been taken to bring the thief to justice. If sold in market *overt*, however, he cannot do so until he has prosecuted the thief to conviction: (Chit. Cont. 358–360, 8th edit.)

Q.—To what cases does the 17th section of the Statute of Frauds apply?

A.—It enacts that no contract for the sale of goods, wares, or merchandise of the price of 10*l.*, and upwards, shall be allowed to be good, unless (1) the buyer shall accept part of the goods, and actually receive the same; or (2) give something in earnest to bind the bargain, or in part payment; or (3) unless the contract be in writing signed by the parties to be charged, or their lawful agents: (Chit. Cont. 360, 8th edit.; Hallilay's Digest, 13, 7th edit.)(*a*)

Q.—Is a sale of goods by public auction within the Statute of Frauds?

A.—Yes, this is now settled; provided the goods are above the price of 10*l.*: (Chit. Cont. 361, 8th edit.)

Q.—Does the Statute of Frauds apply to a contract to build a ship?

A.—Formerly it did not, as the ship did not exist at the time of the contract. But the 9 Geo. 4, c. 14, s. 7, has extended the 17th section of the Statute of Frauds to cases where the subject of the contract is not made, or ready for delivery, &c., at the time of the contract: (Smith's Cont. 112, 3rd edit.; Chit. Cont. 361, 8th edit.; Hallilay's Digest, 13, 7th edit.)

Q.—In deciding whether there has or has not been a sufficient delivery and acceptance of goods to satisfy the Statute of Frauds, is the fact of an existing right of lien in the vendor any and what test to decide the question? Give the reason for your answer.

(*a*) Four.

A.—The right of the vendor to retain possession of the goods as a lien for the price, and the absence of any fact showing the abandonment of such lien, have in many cases been used as a test to discover whether there has been a sufficient delivery and acceptance to satisfy the statute. The reason of this is, that the vendor's lien necessarily supposes that he retains possession of the goods: (Chit. Cont. 372, 8th edit.)

Q.—Will the delivery of a sample take the case out of the Statute of Frauds?

A.—Not if the sample is no part of the thing sold; but if the sample be delivered and received as part of the bulk, it then binds the contract: (Chit. Cont. 375, 8th edit.)

Q.—If goods are sold, has the vendor before delivery a lien for the unpaid price, and does it make any difference if the sale is on credit?

A.—The vendor has a lien for the unpaid purchase-money if the goods are sold for cash, but not if the goods are sold on credit, for such a lien is inconsistent with the terms of the contract. But in case of the bankruptcy of the vendee, the vendor, although he has parted with the possession of the goods, may retake them while they are *in transitu*, the price being unpaid: (Chit. Cont. 395, 396, 399, 8th edit.; Hallilay's Digest, 13, 7th edit.)

Q.—When articles are ordered to be made, and are made accordingly, ready for delivery, but the purchaser refuses to accept them, will the common count for goods bargained and sold suffice, or what form of action should be adopted?

A.—No; it is necessary to declare specially for not accepting the goods: (Chit. Cont. 406, 8th edit.)

Q.—On a sale of goods, is there any implied warranty of their title or quality?(*a*)

A.—There is, in general, no implied warranty of *title* on the sale of goods. However, if the vendor knew he had no title and conceal that fact, he is responsible to the purchaser as for a fraud. Nor does the law imply a warranty on the sale of goods as to their *quality* or soundness; the rule being *caveat emptor* unless the goods are ordered for a particular purpose, or of a particular description; or be *provisions:* (Chit. Cont. 412–419, 8th edit.)

Q.—If a horse is sold and delivered, is or is not a subsequent warranty of soundness valid, and why? (*a*)

A.—It is not, there being no consideration to support it: (Chit. Cont. 51, 423, 8th edit.; Hallilay's Digest, 14, 7th edit.)

Q.—State the different sorts of bailments?

A.—1. *Depositum*, or naked bailment without reward, of goods to be kept by the bailor.
2. *Mandatum*, or *Commission*, where the bailee undertakes without recompense to do some act about the thing bailed.
3. *Commodatum*, or loan for use.
4. *Pignori acceptum*, or pledge or security.
5. *Locatum*, or hiring, for reward.
   (*a*) *Locatio operis faciendi.*
   (*b*) *Locatio rei.*
   (*c*) *Locatio operis mercium vehendarum:* (Chit. Cont. 433, 8th edit.)

Q.—In what cases is a bailee with whom goods are deposited without reward, responsible for their loss?

(*a*) Twice.

A.—He is liable only where the loss occurred through his gross neglect: (Chit. Cont. 434, 8th edit.)

Q.—In what cases does a lien attach upon goods and chattels?

A.—When the bailee has done some work to the goods, or where he is bound to receive them (as a carrier), or in the case of an innkeeper who is bound to receive and take care of the goods of his guest. In all these cases a lien attaches to the goods until the bailee's charges are satisfied: (Chit. Cont. 441, 509, 8th edit.)

Q.—What is the duty of a common carrier, and when does his responsibility cease?

A.—The duty of a common carrier is to carry the goods of any person who offers to pay his hire, unless his carriage be already full, or the risk sought to be enforced on him be extraordinary; or unless the goods be of a description which he cannot convey, or which he is not in the habit of conveying, or are certain specially dangerous goods. Such goods must be forwarded without any unnecessary delay, and in the ordinary course. His responsibility does not cease until the goods are delivered in the usual and ordinary course of delivery: (Chit. Cont. 443, 451, 8th edit.)

Q.—Where goods are sent by a vendor to a vendee, does the presumption arise that the contract for carriage with the carrier is between the vendor and carrier, or the vendee and carrier? State the reason for your answer.

A.—The law presumes that the contract for the carriage is between the vendee and the carrier, because he is in general the party to sue for the loss of them, although the carriage was to be paid by the consignor: (Chit. Cont. 461, 8th edit.)

Q.—State the difference at common law between the responsibility of a common carrier of goods, and a common carrier of passengers.

A.—A common carrier of goods at common law is an insurer, his warranty being safely and securely to carry. He is, therefore, answerable for the goods in any event. But a common carrier of passengers merely undertakes that, far as human care and foresight can go, he will provide for their safe conveyance: (Chit. Cont. 445, 463, 8th edit.)

Q.—State some instances of common law liability of carriers as altered by Act 11 Geo. 4 & 1 Will. 4, c. 68. (*a*)

A.—That they shall not be liable for any loss of coin, jewellery, watches, clocks, bills, Bank of England notes, stamps, title deeds, writings, pictures, plate, glass, &c., when the value of such articles shall exceed the sum of 10*l.*, unless at the time of the delivery thereof the value of such articles shall have been declared by the person sending or delivering same, and an agreement be made to pay an increased charge for the carriage: (Chit. Cont. 456, 8th edit.; Hallilay's Digest, 9, 7th edit.)

Q.—Could an action at common law be maintained on a wager, and how is this now affected by statute law?

A.—At common law an action might be maintained on a wager, although the parties had no previous interest in the question on which it was laid, provided it was not against the interest or feelings of third parties, or did not lead to indecent evidence, or was not contrary to public policy. But now by the 8 & 9 Vict. c. 109, s. 18, all contracts or agreements, whether by parol or in writing, by way of gaming or wagering, are null and void: (Chit. Cont. 467, 468, 8th edit.; Hallilay's Digest, 8, 7th edit.)

Q.—What is the general nature of a contract of guarantee? (*a*)

(*a*) Twice.

A.—It is a *collateral* promise in writing to answer for the debt, default, or miscarriage of another who remains *primarily* liable for such debt, &c.: (Hallilay's Digest, 22, 7th edit.; Chit. Cont. 469, 8th edit.; *Birkmyr* v. *Darnell*, 1 Smith's Lead. Cas. 133.)

Q.—What is a guarantee? How is it affected by the Statute of Frauds?

A.—A guarantee is as above described. The 4th section of the Statute of Frauds requires it to be in writing, signed by the party to be charged, or his lawful agent: (Chit. Cont. 469, 8th edit.; Hallilay's Digest, 22, 7th edit.)

Q.—Where a party is indemnified against the demand of a third person, has he any right to defend an action brought by the latter to enforce his demand, and then claim the costs from the party guaranteeing? What course should the party indemnified pursue to protect himself against such costs?

A.—The surety has no right, without express authority, to defend the action and then claim the costs from the party guaranteeing, unless in defending the action and incurring such costs he has acted as a reasonable and prudent man, unindemnified, would have acted in his own case. He should give notice to the principal debtor of the commencement of the proceeding and to come in and defend the action: (Chit. Cont. 473, 8th edit.)

Q.—What is the effect as regards the liability of a surety, if either the person whose fidelity is guaranteed, or a person to whom the guarantee is given, takes a partner, the transaction in respect of which the guarantee is given being continued by or with the firm?

A.—If a person engage as surety *for* an individual, the engagement is understood to extend to that individual alone, and not to those of himself and a partner. And if a person engage as surety *to* an individual, the engagement is also understood to be to that individual alone, and it ceases if he takes a partner who is interested. And by the 19 & 20 Vict. c. 97, s. 4, the surety would be discharged if the engagement were made to a firm, on any change in its members, unless the intention of the parties that the promise should continue to be binding notwithstanding such change, should appear either by express stipulation or by necessary implication from the nature of the firm or otherwise: (Chit. Cont. 486, 487, 8th edit.)

Q.—What is the effect as regards the liability of the surety of any dealing by the creditor with the liability of the principal debtor; and if the creditor gives time for payment to the principal debtor, is it material whether he does it under a binding engagement to do so, or through gratuitous forbearance?

A.—Any connivance of the creditor with the principal's default will discharge the surety. Mere forbearance by the creditor without any binding agreement to refrain from taking proceedings will not relieve the surety, but a binding agreement to do so will, if made with the principal: (Chit. Cont. 495, 8th edit.)

Q.—Is there any, and, if so, what remedy by which a surety can recover back from the principal debtor the money he (the surety) has been compelled to pay to the creditor?

A.—The surety, on discharging the debt, is entitled to obtain from the creditor all the securities for the debt which the latter held, and may also sue the principal debtor on the same. He may also sue him for money paid: (Chit. Cont. 499, 549, 8th edit.)

Q.—When a chattel is delivered to a workman to do certain work thereon and the order for the work is countermanded when the work is partially done, but not completed, has the workman any lien on the chattel, and if so to what extent?

A.—Yes; he has a lien on the chattel for the price of the work actually done: (Chit. Cont. 509, 8th edit.)

Q.—Where a domestic servant entitled to a month's warning, or a month's wages, is wrongfully discharged by his master without any payment or wages, will the common count for work and labour suffice, or must he declare specially and how?

A.—The servant must declare specially for the improper dismissal, and not for bygone services: (Chit. Cont. 533, 8th edit.)

Q.—What is a common count? Give some instances where it may be adopted.(*a*)

A.—A common count is a statement of a cause of action in a declaration, used to recover some debt on simple contract. As when A. sues B. for goods sold and delivered, money lent, money had and received, &c.: (Hallilay's Digest, 64, 7th edit.; Chit. Cont. 406, 8th edit.)

Q.—A. borrows of B. 100*l.* A. gives a bond with a covenant to pay. Can B. sue A. for money lent? State the reason.

A.—There being a covenant to pay, B. cannot sue A. for money lent; he must sue on the covenant: (Chit. Cont. 7, 544, 8th edit.)

Q.—Give instances where a count for money had and received lies?

A.—By a principal against his agent to recover moneys collected and received by the latter for his use; for the proceeds of goods sold by the agent for his principal, and which proceeds have come to the hands of the agent; for tolls wrongfully taken and withheld by a corporation aggregate; and to recover money paid on a consideration which has failed: (Chit. Cont. 566, *et seq.*, 8th edit.)

Q.—If a party voluntarily pays a debt which the law would not have compelled him to pay, as for instance, a debt barred by the Statute of Limitations, can he recover back the amount so paid?

A.—No; even though the demand arose out of an illegal transaction: (Chit. Cont. 584, 8th edit.)

Q.—Can money be recovered back or not, when paid under a mistake as to facts or as to law?

A.—Money paid under mistake of a *material fact* may be recovered back, but not under a mistake of law: (Chit. Cont. 581, 585, 8th edit.)

Q.—What is the general rule of law as to the recovery of interest on simple contract debts?

A.—The general rule is that the law does not *imply* a contract by the debtor to pay interest unless such be the usage of trade. To this rule bills of exchange, promissory notes, and over due money bonds form an exception: (Hallilay's Digest, 21, 7th edit.; Chit. Cont. 595, 598, 8th edit.)

Q.—Is an account stated, showing a balance against the person giving it conclusive evidence of the balance being due?

A.—No; it is only presumptive evidence against the party admitting the balance against him, there being no rule of law which precludes a man from disputing or explaining any particular item of such an account: (Chit. Cont. 606, 8th edit.)

Q.—Give an instance of a contract void at common law, and also of a contract void by statute.

(*a*) Twice.

A.—Immoral contracts and those against public policy are void at common law. A contract by way of gaming is illegal by statute: (Chit. Cont. 612, 643, 8th edit.)

THE PRACTICE OF THE COURTS.(*a*)

Q.—State the names of the three Superior Courts, and give an account of their concurrent and exclusive jurisdictions.

A.—They are the Queen's Bench, the Common Pleas, and the Exchequer. They have concurrent jurisdiction in all *personal* actions. The Queen's Bench has a criminal as well as a civil jurisdiction, and a superintending power over inferior tribunals. The Common Pleas has an exclusive jurisdiction over actions of dower, free bench, and *quare impedit*, the registration of judgments, and some other matters. The Exchequer of Pleas has exclusive jurisdiction over revenue matters: (Smith's Action at Law, ch. 1; Hallilay's Digest, 40, 7th edit.)

Q.—What is an affidavit? and what four things are necessary to be observed in forming one?

A.—It is a written statement upon oath; and requires (1) a title, being a statement of the court in which the action is brought, and the names of the plaintiff and defendant; (2) a description of the deponent; (3) the body or contents, divided into paragraphs, numbered consecutively, and each confined to a distinct portion of the subject; and (4) the jurat: (Smith's Action at Law, 29, 10th edit.; Hallilay's Digest, 43, 44, 7th edit.)

Q.—How is a deponent to be described in an affidavit made in a cause?

A.—The deponent's addition and true place of abode must be stated: (Smith's Action at Law, 30, 10th edit.; Hallilay's Digest, 43, 7th edit.)

Q.—Mention some of the principal forms of action at common law.

A.—They are trespass, case, trover, detinue, and replevin, and these are founded *ex delicto*, or on tort; covenant, debt, and assumpsit, which are founded *ex contractu*, or on contract: (Smith's Action at Law, 45-47, 10th edit.)

Q.—When does assumpsit lie?

A.—For the breach of some simple contract: (Smith's Action at Law, 47, 10th edit.; Hallilay's Digest, 47, 7th edit.)

Q.—What are the periods of limitation for the remedy by action on simple contract and specialty debts respectively?

A.—Simple contract debts six years, specialty debts twenty years. But if the person entitled to bring the action be an infant, *feme covert*, *non compos mentis*, or if the person liable on the contract is beyond seas, the statute does not begin to run until these disabilities are ended: (Smith's Action at Law, 49, 10th edit.; Hallilay's Digest, 52, 7th edit.)

Q.—What is required of an attorney before he can sue for his bill of costs?

A.—He must, one calendar month before he commences his action, deliver or send to the person charged a bill of his fees, charges, and disbursements, signed by the attorney, or inclosed in or accompanied by a letter signed by the attorney, referring to the bill: (Smith's Action at Law 53, 10th edit.; Hallilay's Digest, 145, 7th edit.)

(*a*) Questions on the practice of the courts are not at *present* asked by the Examiners.

Q.—Within what time must the writ of summons be served?

A.—Within six months from its date, including the day of such date. But it may be renewed from time to time by being resealed within proper time: (Smith's Action at Law, 63, 10th edit.; Hallilay's Digest, 57, 7th edit.)

Q.—What is the meaning and effect of a writ of summons being specially indorsed?

A.—It means that in addition to the ordinary indorsements the plaintiff sets out particulars of his claim against the defendant. It can only be made when the claim is certain in amount. If the defendant, on being served with such a writ, does not appear thereto in due time, the plaintiff may sign judgment for default, and issue execution thereon at the expiration of eight days from the time limited for appearance: (Smith's Action at Law, 64, 10th edit.; Hallilay's Digest, 58, 7th edit.)

Q.—An action of contract is to be brought against several persons, partners, must each be served separately, or can they all be made defendants by service upon one?

A.—All the partners must be served personally; you cannot serve one for all. But, under certain circumstances, a judge's order to strike out the names of such partners as cannot be served, or to dispense with service, might be obtained: (Hallilay's Digest, 56, 7th edit.; Smith's Action at Law, 72, 10th edit.)

Q.—What is the next step on the part of the plaintiff in an action when the defendant has appeared?

A.—To deliver to the defendant or his attorney the declaration in the action; upon which is usually indorsed a notice requiring the defendant to plead in eight days otherwise judgment: (Hallilay's Digest, 63, 67, 7th edit.; Smith's Action at Law, 77, 80, 10th edit.)

Q.—Define a plea in bar. Give instances of pleas in bar.

A.—It is a substantial answer to the action. "Never indebted as alleged" would be a plea in bar to an action for goods sold and delivered; as would payment, bankruptcy, and the like: (Smith's Action at Law, 81, 10th edit.; Hallilay's Digest, 66, 7th edit.)

Q.—How and when can a defendant obtain particulars of the plaintiff's demand?

A.—By summons at chambers, either before or after appearance, in actions containing money or common counts, when the declaration does not disclose them. Particulars may also be had in actions of tort: (Smith's Action at Law, 100, 10th edit.; Hallilay's Digest, 79, 7th edit.)

Q.—What are the different kinds of venue, and how are they distinguished?

A.—Venues are either local or transitory. The venue is local when the cause of action could not have taken place in any other county, as trespass to certain lands; transitory, where the cause of action might have happened in any county, as trespass to the person: (Smith's Action at Law, 109, 10th edit.; Hallilay's Digest, 62, 7th edit.)

Q.—How must the county in which actions are to be brought be determined?

A.—By ascertaining whether the cause of action is local or transitory; as to which see *supra.*

Q.—What is an issue of *nul-tiel record,* and how is it tried?

A.—It is an issue tried when an action is brought on some record, as on a judgment, and the defendant pleads *nul-tiel record,* whereupon the plaintiff joins issue. It is tried by producing the record itself; the trial

must take place in *banc:* (Smith's Action at Law, 120, 10th edit.; Hallilay's Digest, 85, 7th edit.)

Q.—Within what time must a plaintiff countermand his notice of trial, so as to prevent his liability to the costs of the day?

A.—Unless the defendant is under terms to take short notice of trial, the plaintiff must give four days' notice of countermand, but if under such terms, two days are sufficient: (Smith's Action at Law, 124, 125, 10th edit.; Hallilay's Digest, 75, 7th edit.)

Q.—What are some of the usual grounds for allowing a new trial?

A.—For misdirection by the judge to the jury in point of law; where the verdict is against evidence; for smallness of damages or for excessive damages, &c.: (Smith's Action at Law, 167, 10th edit.; Hallilay's Digest, 94, 7th edit.)

Q.—Within what time must a new trial be moved for?

A.—If the cause be tried in term, within four days after the trial; and if tried in vacation, within the first four days of the following term; unless entered in a list of postponed motions by leave of the court: (Hallilay's Digest, 94, 7th edit.)

Q.—What is an interlocutory judgment, and how is final judgment obtained thereafter?

A.—An interlocutory judgment is one given in an action which does not terminate it. As if the plaintiff sues for damages and the defendant lets judgment go by default. This judgment is interlocutory, for it is not known what *amount* of damages the plaintiff is entitled to, which must be ascertained either on a writ of inquiry before the sheriff or by a master of the court: (Smith's Action at Law, 179, 181, 10th edit.; Hallilay's Digest, 97, 7th edit.)

Q.—What is a writ of inquiry; and can a writ of trial now be issued?

A.—A writ of inquiry is a writ directed to the sheriff commanding him to summon a jury and *inquire* into the amount of damages due from a defendant to a plaintiff in an action, as shown in the previous answer: (see references *supra.*) No writ of trial can now be issued: (Hallilay's Digest, 76, 80, 97, 7th edit.; Smith's Action at Law, 117, 181, 10th edit.)

Q.—If a *feme sole* plaintiff should marry after declaration, and before trial, in whose name must the action proceed to trial, and in whose name must execution be issued?

A.—The marriage (a woman plaintiff) before judgment does not cause the action to abate, but it may be proceeded with to judgment; and in case of a judgment for the wife, execution may be issued thereupon by the authority of the husband without any writ of revivor or suggestion: (Smith's Action at Law, 187, 10th edit.)

Q.—From what time and from what Act of Parliament does a plaintiff's right to costs originate?

A.—From the reign of Edward I., viz., the 6 Edw. 1, c. 1, called the Stat. Gloucester: (Smith's Action at Law, 191, 10th edit.)

Q.—State if a plaintiff is entitled to his costs when he recovers a sum not exceeding 20*l.* in an action of contract in a superior court.

A.—He does not get them unless the judge who tries the cause certifies on the record that there was sufficient reason for bringing such action in a Superior Court, or the court or a judge at chambers allows such costs. This does not apply to actions for breach of promise of marriage: (9 & 10 Vict. c. 95, s. 58; 30 & 31 Vict. c. 142, ss. 5, 34; Hallilay's Digest, 104, 7th edit.; Smith's Action at Law, 195, 10th edit.)

Q.—When may execution be issued on a verdict at Nisi Prius?

A.—On the expiration of fourteen days after verdict, judgment may be signed and execution issued unless otherwise ordered: (Smith's Action at Law, 225, 10th edit.)

Q.—What is the meaning and effect of a writ of *fieri facias* and a *capias ad satisfaciendum*?

A.—A writ of *fieri facias* is a writ of execution directed to the sheriff, commanding him that of the defendant's goods and chattels he *cause to be made* the amount recovered by the judgment. The *capias ad satisfaciendum* was also a writ of execution, commanding the sheriff to *take* the defendant *to satisfy* the plaintiff's debt, but by 32 & 33 Vict. c. 62, s. 4, this writ is abolished: (Smith's Action at Law, ch. 10; Hallilay's Digest, 112, 7th edit.)

II. CONVEYANCING.

[NOTE.—*The books from which the Questions in this branch are taken are Stephen's Commentaries, vol.* 1, *and Williams on the Law of Real Property. At present Mr. Williams's work only is used by the Examiners.*]

OF THE CLASSES OF PROPERTY.

Question.—What, according to Williams, was one of the simplest and most natural divisions of property in times of but partial civilization? and how did the two great classes of property begin to acquire two other names, more characteristic of their difference, and what were those other names?

Answer.—*Movable* and *immovable* (according to Williams) are the simplest and most natural divisions of property in times of but partial civilization. After the Norman Conquest, the land was parcelled out to the king's followers, who held the same on condition of their performing certain services, &c., and the lands were, therefore, called *tenements* or *things held.* And because they devolved at the death of the owner on his heir, they were also called hereditaments. Movables were too perishable to be subject to any feudal liabilities. Immovables, then, were called *lands, tenements,* and *hereditaments*; while movables were known as *goods* and *chattels.* In course of time it became obvious that a great distinction between the classes of property was in the mode of recovering possession of the same. In one case the *real* land may be recovered, but for goods an action must be brought against the *person* of the wrongdoer. The respective classes of property became known as *real* and *personal* property: (Will. Real Pro. 2-7, 9th edit.; Hallilay's Digest, 148, 7th edit.)

Q.—Into which of the two classes are leases for terms of years placed, and for what reason?

A.—Terms of years are but personal property. The reason for this is that in olden times leases were of but little value, and if the lessee were wrongfully evicted, he could only bring an action against his landlord for damages. The lease was, therefore, nothing more than a chattel, and, when leases became of greater value, no change was made: (Will. Real Pro. 8, 9th edit.)

Q.—Besides the division of property before alluded to, Williams mentions another classification which deserves to be mentioned. What is that classification?

A.—Corporeal and incorporeal: (Will. Real Pro. 10, 11, 9th edit.)

Q.—Define the meaning of the terms "real property" and "personal property," stating what description of property is comprised under each of such.(*a*)

A.—These terms have been defined above. In addition to the property before comprised in these divisions, we may add that shares in canals and railways are generally personal property, while titles of honour are considered as real property: (Will. Real Pro. 8, 9th edit.)

(*a*) Twice.

Q.—Hereditaments are of two kinds; distinguish between them, and give examples of each class.(*a*)

A.—Hereditaments are (1) *corporeal*, which are such as affect the senses, and may be seen and handled by the body, as lands and houses; (2) *incorporeal*, being a right issuing out of a thing corporeal, or concerning or annexed to or exercisable with the same, as rents, offices, advowsons, &c.: (1 Steph. Com. 175, 655, 5th edit.; Will. Real Pro. 10, 229, 307, 9th edit.; Hallilay's Digest, 148, 172, 7th edit.)

Q.—What does the term "estate in land" signify?

A.—It signifies such an interest as the tenant has therein: (1 Steph. Com. ch. 3; Hallilay's Digest, 151, 7th edit.)

ESTATES.

Q.—Williams says that no man is, in law, the absolute owner of land. What, then, can he hold in land?

A.—An estate: (Will. Real. Pro. 17, 9th edit.)

Q.—What estate is conferred by a grant to A. B. simply?

A.—An estate to him for life only: (Will. Real Pro. 19, 9th edit.; Hallilay's Digest, 162, 7th edit.)

Q.—What is an estate *pur autre vie*?(*a*)

A.—An estate held for the life of another: (Will. Real Pro. 20, 9th edit; Hallilay's Digest, 162, 7th edit.)

Q.—Is an estate to a man for his own life an estate of freehold? and is there any difference if the estate be held for the life of another person?

A.—Both are estates of freehold. In the first case he has an estate for life, and in the latter an estate *pur autre vie*: (Will. Real Pro. 22, 9th edit.; Hallilay's Digest, 162, 7th edit.)

Q.—What different kinds of estate can be held in real property, and distinguish clearly between them?

A.—An estate in lands and tenements may be considered: 1. In reference to the nature of the ownership; *i.e.*, whether it be legal or equitable. Legal estates are those limitations of interest in realty which give a party a right at law to the ownership and profits; an equitable estate is such an interest as is not, for most purposes, noticed at law, but in equity is, in fact, the beneficial ownership of the land and its profits as distinguished from the mere legal seisin. 2. In reference to the quantity of interest; *i. e.*, whether freehold or less than freehold. Freehold estates are (*a*) for life; (*b*) in tail; and these may be in tail male or tail female, or general, or special; or (*c*) in fee. Estates less than freehold may be (*a*) for years, (*b*) at will, or (*c*) at sufferance. 3. With regard to the time of enjoyment: *i. e.*, whether the interest is in possession or expectancy. And 4, with regard to the number and connection of the tenants; as joint tenants, tenants in common, co-parceners and tenants by entireties: (Will. Real Pro. 22, 59, 157, &c., 9th edit.; Hallilay's Digest, 151, 164, 7th edit.)

Q.—What estate would A. take under the following grants: (1) To A. (2.) To A. for 99 years. (3.) To A. for 99 years, if he should so long live. (4.) To A. and his heirs. (5.) To A. and the heirs of his body? Which of these estates are freehold?

A.—(1.) An estate for life. (2.) An estate for years. (3.) An estate for years determinable on his life. (4.) An estate in fee simple. (5.) An estate tail. The first, fourth, and fifth estates are freehold.

(*a*) Thrice.

ESTATES FOR LIFE.

Q.—What are the powers of a tenant for life over the estate? Can he open new mines, or continue the working of existing mines, or cut timber, or commit waste? And how are his rights varied when the tenant for life is declared to be without impeachment of waste?(*a*)

A.—Every tenant for life may, unless restrained by covenant or agreement, take reasonable botes or estovers; but he must not commit waste, such as the opening of new mines, or the cutting of timber, although he may work existing mines. If, however, his estate be given him without impeachment of waste, the tenant may commit all acts of waste except equitable waste: (1 Steph. Com. ch. 4; Will. Real Pro. ch. 1; Hallilay's Digest, 163, 7th edit.) As to his powers of leasing see *infrà*.

Q.—State whether under any and what circumstances a tenant for life has a right to cut timber, open a quarry, and search for mines.

A.—When his estate is granted him without impeachment of waste. But even then he will not be allowed to cut ornamental timber: (see references *suprà*.)

Q.—Can a tenant for life make leases without any express authority in the instrument under which he takes, and if so, what leases?(*a*)

A.—Under the 19 & 20 Vict. c. 120, every tenant for life, taking under a settlement executed after the 1st of November, 1856 (unless restrained thereby), may, without any application to the Court of Chancery, lease the estate (except the principal mansion-house and usual demesnes) for twenty-one years, which lease binds the remainderman. It must be by deed, take effect in possession, at the best rent, without fine, be impeachable for waste, and contain all usual covenants. If the tenant takes his estate before the above period he can make no lease to endure beyond his own life, unless under a power: (Will. Real Pro. 26, 9th edit.; Hallilay's Digest, 204, 7th edit.)

Q.—What power had a tenant for life to lease lands previous to the 1st of November, 1856, and what since that date?

A.—See preceding answer.

Q.—What is waste, and what are the remedies of the remainderman against the tenant for life on the commission of waste?

A.—Waste is that which tends to the permanent depreciation of the value of the inheritance. It is either *voluntary*, which is an offence of commission, as by pulling down a house; or it is *permissive*, which is an offence of omission only, as by suffering it to fall for want of necessary repairs. The remedy of the remainderman against the tenant for life is by action for waste already done or by injunction for waste contemplated: 2 Smith, R. & P. Pro. 1185, 4th edit.; Will. Real Pro. 23–25, 9th edit.)

Q.—When a tenant at rack-rent holds of a tenant for life, who dies before the tenancy has ended, has he any and what right, by a modern statute, of holding over; and if so, on what terms?

A.—He does not now claim emblements, but holds over until the expiration of his current year's tenancy, paying a proportionate part of the rent to the new landlord, and being compelled to quit at the end of the tenancy without notice to do so: (Will. Real. Pro. 27, 9th edit.; Hallilay's Digest, 180, 7th edit.)

Q.—Land is limited by settlement to the use of A. for life with remainder to his first and other sons in tail male, and charged with a jointure, and portions to younger children. The settlement confers no

(*a*) Twice.

power for the trustees to sell. Can the land be sold during the minority of A.'s son, and if so, by what means?

A.—Yes; A. may apply by petition to the Court of Chancery for a sale of the estate, which the court has power to order, on being satisfied that it is proper and consistent, with due regard for the interests of all parties entitled: (Will. Real Pro. 32, 9th edit,; Hallilay's Digest, 267, 454, 7th edit.)

Q.—How, and under what circumstances, can a sale of settled estates be effected, and how is the purchase money to be applied and invested?

A.—As to the mode of effecting this object see the preceding answer. The purchase money is to be paid either to trustees approved by the court, or into court, and applied in the redemption of the land-tax, or of any incumbrance affecting the hereditaments sold, or any other hereditaments settled in the same way; or in the purchase of other hereditaments settled in the same way; or in the payment to the person becoming absolutely entitled. The money in the meantime to be invested in exchequer bills or consols, and the dividends paid to the tenant for life: (Will. Real Pro. 32, 9th edit.)

ESTATES TAIL.

Q.—What is an estate in fee tail, and of how many kinds?(*a*)

A.—It is an estate given to a man and the heirs of his body. It is of two kinds—general and special. It may also be in tail male or tail female: (1 Steph. Com. 247, 5th edit.; Will. Real Pro. 34, 9th edit.; Hallilay's Digest, 154, 7th edit.)

Q.—What words are sufficient to create an estate tail?

A.—An estate tail is created in a deed by a limitation to a man *and the heirs of his body.* In a will a devise to a person and his seed, or to him and his issue, and many other similar expressions will be sufficient to give an estate tail. A devise to a man and his *heirs male* will confer an estate in tail male: (Will. Real Pro. 154, 208, 9th edit.; Hallilay's Digest, 154, 7th edit.)

Q.—Give an instance of an estate tail general and an estate tail special.(*a*)

A.—The former arises on a grant to a man and the heirs of his body generally, without restriction. The latter, where it is restricted to certain heirs, as to A. and the heirs of his body by B. his present wife to be begotten: (see references *supra.*)

Q.—Land is devised by a father to his son for life with remainder to the heirs of his body. What estate does the son take?

A.—An estate tail under the rule in Shelley's case: (Will. Real Pro. 49, 243, 9th edit.; Hallilay's Digest, 157, 7th edit.)

Q.—An estate is settled to the use of A. for life, remainder to the use of B. and the heirs male of his body, with remainder to the use of C., and the heirs of his body, with remainder to the use of D. and his heirs. State in technical terms what estate A., B., C., and D., respectively have?

A.—A. has an estate for life, B. an estate in tail male, C. an estate tail, and D. an estate in fee simple. The estates of all except A. are also said to be in *remainder*: (Will. Real Pro. 17, 34, 59, 241, 9th edit.)

Q.—How is an estate tail barred?

A.—By deed executed by the tenant in tail, with the consent of the protector, if one, and enrolled in Chancery within six months after execution: (1 Steph. Com. 584, 5th edit.; Will. Real Pro. 51, 54, 9th edit.; Hallilay's Digest, 157, 7th edit.)

(*a*) Twice.

Q.—What was the ancient mode of barring an estate tail, and by which statute was the modern practice substituted?

A.—The ancient mode of barring entails was usually by a common recovery. Occasionally it was by a fine, but this would only bar the issue. But by the 3 & 4 Will. 4, c. 74, a disentailing deed enrolled in Chancery was substituted for the above methods: (Will. Real Pro. 45, 47, 9th edit.; Hallilay's Digest, 157, 7th edit.)

Q.—Who is protector of a settlement?

A.—Usually the first tenant for life under the settlement creating the entail; but he may be appointed by the settlor without his taking any interest in the estate: (1 Steph. Com. 586, 588, 5th edit.; Will. Real Pro. 52, 9th edit.; Hallilay's Digest, 158, 7th edit.)

Q.—A. is tenant for life under the settlement, and B. tenant in tail in remainder, can B. turn his estate into a fee simple; and, if so, how?

A.—He may do so with the consent of A., who is the protector, by deed enrolled in Chancery within six months after execution: (see references *suprà*.)

Q.—When there is a tenant in tail in remainder after an estate for life, whose consent is necessary in order to bar the entail, and the remainders over; and how is that consent to be given? And to what extent, if any, can the tenant in tail effect any bar without such consent? (*a*)

A.—The consent of the tenant for life, if his estate were created by the same settlement as the entail, is necessary, which may be given either by the deed barring the entail, or by another deed executed and enrolled at the same time as or before that deed. Without the consent of the tenant for life the tenant in tail, by deed enrolled, bars his own issue and creates a base fee: (1 Steph. Com. 584, 5th edit.; Will. Real Pro. 51, 52, 9th edit.; Hallilay's Digest, 157, 159, 7th edit.)

Q.—How can the estate of a tenant in possession be turned into an estate in fee simple?

A.—By deed enrolled, &c., as before fully detailed.

Q.—Define the term "possession" in the above question.

A.—The term possession means the *seisin* or present enjoyment of the freehold in the lands. But it must be remembered, that if the entail is preceded by an estate for years determinable on lives created by the same settlement as the entail, it is considered in remainder so far as barring the entail is concerned: (1 Steph. Com. 318, 579, 588, 5th edit.; Will. Real Pro. 51, 52, 9th edit.; Hallilay's Digest, 155, 7th edit.)

Q.—Describe the proceeding by which an estate tail with remainders over might be barred under the old law.

A.—By the tenant in tail suffering a recovery, in which the tenant of the preceding estate of freehold, called the tenant to the *præcipe*, was a necessary party: (Will. Real Pro. 45, 47, 9th edit.; Hallilay's Digest, 156, 7th edit.)

Q.—What leases can a tenant in tail make?

A.—Leases for a term not exceeding twenty-one years, to be by deed; commence in possession from the date of the lease; or within twelve calendar months from the date; where the rent received is a rack rent or not less than five-sixth parts of a rack rent. The deed need not be enrolled: (Will. Real Pro. 55, 9th edit.; Hallilay's Digest, 161, 7th edit.)

Q.—If a tenant in tail in possession commits waste and dies without

(*a*) Thrice.

having barred the entail, can the issue in tail claim any compensation for such waste ?(*a*)

A.—No; a tenant in tail may commit what waste he pleases without barring the entail for that purpose: (Will. Real Pro. 55, 9th edit.)

AN ESTATE IN FEE SIMPLE.

Q.—Describe an estate in fee simple.

A.—It is one given to a man and his heirs; being the largest estate which the law of England allows any individual to possess in landed property: (Will. Real Pro. 59, 9th edit.; 1 Steph. Com. 238, 5th edit.; Hallilay's Digest, 153, 7th edit.)

Q.—What is the difference between an estate in fee simple, and an estate in fee tail ?(*a*)

A.—The difference is one of *quality*, not *quantity*. The fee simple being the highest, extending to lineal and collateral heirs, while the fee tail is limited to lineal heirs only. So there is a difference in the formalities of their transfer: (1 Steph. Com. 243, &c., 5th edit.; Hallilay's Digest, 151, 7th edit.)

Q.—If a woman, being a natural born subject, has a child born abroad, is her child an alien ?

A.—No; the 7 & 8 Vict. c. 66, having given to such children the right of acquiring real and personal property—a right which was denied (as regards real property) to aliens, previous to the Naturalization Act, 1870: (Will. Real Pro. 64, 9th edit.)

Q.—At what age can a male or female infant respectively make a valid settlement on marriage, and under what authority; and if such infant be tenant in tail, what effect has such settlement ?

A.—Males at 20, and females at 17. The sanction of the Court of Chancery is necessary, and the settlement must be upon or in contemplation of marriage. If the infant be a tenant in tail, and executes a disentailing assurance, and dies under twenty-one, the deed is void: (18 & 19 Vict. c. 43; Will. Real Pro. 65, 9th edit.; Hallilay's Digest, 272, 7th edit.)

Q.—How can lands be settled for charitable uses ?

A.—Lands may be settled to charitable uses by deed executed in the presence of two credible witnesses twelve calendar months before the death of the grantor, enrolled in Chancery within six months after execution, and to take effect in possession immediately on the granting thereof, and without power of revocation. But *bonâ fide* conveyances for a valuable consideration are exempted from the provision of the Mortmain Acts; (Will. Real Pro. 67, &c., 9th edit.; Hallilay's Digest, 289, 7th edit.)

Q.—What are the requisites necessary to bind purchasers or mortgagees of land with judgment-debts (1) before the 23 & 24 Vict. c. 38, and (2) after this statute ?

A.—Before this Act it was necessary to register, and at the proper time to re-register, the judgment by leaving full particulars thereof with the senior master of the Court of Common Pleas. After the Act it was, in addition, necessary to issue a writ of execution, register that and put it in force within three months from registration. And as to judgments entered up since the 29th of July, 1864, the lands are not affected by the judgment until such lands have been actually delivered in execution, and the writ of

(*a*) Twice.

execution duly registered: (27 & 28 Vict. c. 112; Will. Real Pro. 85, 9th edit.; Hallilay's Digest, 220, 7th edit.)

Q.—What is an heir apparent and presumptive?

A.—The former is he who if he survives the ancestor must be heir at all events; as the eldest son during his father's lifetime. The latter, though not certain to be heir, would be so if the ancestor were to die at once; as an only daughter before the birth of a son: (Will. Real Pro. 93, 9th edit.; Hallilay's Digest, 295, 7th edit.)

ON DESCENTS.

Q.—What is the difference between a title by purchase and a title by descent?

A.—The former is a title acquired in any other manner than by descent, as where land is devised by will; the latter where it is cast by law, as when lands descend to the eldest son on the death of his father: (Will. Real Pro. 96, 9th edit.; 1 Steph. Com. ch. 10; Hallilay's Digest, 234, 7th edit.)

Q.—Define the legal meaning of the word "purchase" as contra-distinguished from descent, and to what tenure is it applicable?

A.—The definition of this term is stated above. The term is only applicable to lands in fee simple or in tail, and perhaps leaseholds for lives, as personal property does not *descend* on the death of a person intestate to his heir. Such property is governed by the Statute of Distributions: (Will. Real Pro. 96, 112, 9th edit.)

Q.—What is meant by the term purchase?

A.—This term, as before shown, is said to include every mode of acquiring land other than by descent. It is doubtful, however, whether, strictly speaking, it includes inclosure, elegit, and bankruptcy: (1 Steph. Com. ch. 10; Hallilay's Digest, 205, 206, 7th edit.)

Q.—State the rules of descent.(*a*)

A.—(1.) Inheritances shall lineally descend, in the first place, to the issue of the purchaser *in infinitum*.

(2.) Male issue is preferred to female.

(3.) When two of male issue are in equal degree of consanguinity to the purchaser, the elder is preferred, but females inherit together.

(4.) The lineal descendants of a deceased person represent their ancestor.

(5.) On failure of lineal descendants the inheritance descends to the nearest lineal ancestor in the preferable line.

(6.) The father and male paternal ancestors of the purchaser and their descendants take before the female paternal ancestors and their heirs; and the female paternal ancestors and their heirs before the mother or maternal ancestors or their heirs; and the mother and male maternal ancestors and descendants before the female maternal ancestors and their descendants.

(7.) Kinsmen of the half blood are now admitted in their order.

(8.) In the admission of the female paternal and female maternal ancestors, the mother of a more remote ancestor is preferred to the mother of a less remote ancestor.

(9.) When there is a total failure of heirs of the purchaser the lands shall descend and the descent be traced from the person last entitled as if he had been the purchaser: (Will. Real Pro. ch. 4, pt. 1; Hallilay's Digest, 296, 7th edit.)

(*a*) Twice.

Q.—What is the first rule of descent; from whom must it now be traced?

A.—The rule is given above. The descent must now be traced from the last person entitled *who did not inherit:* (Will. Real Pro. 97, 9th edit.; Hallilay's Digest, 297, 7th edit.)

Q.—State the rules which now regulate the descent of an estate in fee tail.

A.—The first four of the above rules: (Will. Real Pro. 101, 9th edit.)

Q.—When do female descendants inherit, and why were they and are they postponed to males of equal degree?

A.—By the second and third rules the females inherit after the males, and the issue of males standing in an equal degree to the intestate. Some give as a reason for the preference of males to females in descent that it directly accorded with the spirit of the feudal system, which imposed certain military obligations on the holders of the land which it was not easy for females to perform, and that they should not enjoy the benefits without also bearing the burdens. But the more correct opinion is the degraded position which females in olden times held in society, and their rights in this respect were left untouched by the Law of Inheritance Act, 1834: (3 & 4 Will. 4, c. 106; Will. Real Pro. 103, 9th edit.)

Q.—Can kinsmen of the half blood inherit when the common ancestor is a male or female, and after whom in degree will he succeed?

A.—By the 3 & 4 Will. 4, c. 106, kinsmen of half blood now succeed, but only next after a kinsman and his issue in the same degree of the whole blood when the common ancestor is a male, and next after the common ancestor when such ancestor is a female: (Will. Real Pro. 105, 9th edit.; Hallilay's Digest, 296, 7th edit.)

Q.—A. B., the "purchaser" of an estate in fee simple, dies intestate, leaving surviving him a daughter by his first marriage, and two sons by his second marriage, to whom does the estate in fee simple descend?

A.—As all the children stand in an equal degree to the intestate, the eldest son will take by the second and third rules: (Will. Real Pro. ch. 4, pt. 1.)

Q.—A., B., and C. die intestate, each seised in fee of a freehold estate. A. leaves two daughters of age and an infant son; B. leaves two sons and a wife; C. leaves three daughters. What interests do the several children of A., B., and C. and the wife of B. take in the respective freehold estate?

A.—The infant son of A. will take the estates. The eldest son of B. will take the estate subject to the dower of his mother, if not barred. The three daughters of C. will take the estate as co-parceners: (Will. Real Pro. pt. 1, ch. 4; Hallilay's Digest, 295–300, 7th edit.)

Q.—A., an only son, takes an estate from his mother by descent; B., an only son, takes one from his mother by purchase; on the death of A. and B., intestate and without issue, each leaving a brother of their father and mother surviving, who will succeed to the estates of A. and B. respectively?

A.—The brother of A.'s mother will be his heir; for as the lands descended to A. *ex parte maternâ*, none but relations on the mother's side can inherit. The lands of B. will, however, go to the brother of the father, for having taken the lands from his mother by purchase (devise) makes B. the root of descent: (1 Steph. Com. 416–432, 5th edit.; Hallilay's Digest, 299, 7th edit.)

Q.—Explain the words (1) primogeniture, (2) coparceners, (3) escheat, (4) estoppel; (5) disgavelled.

A.—(1.) *Primogeniture* is the right of the eldest son to inherit his ancestor's real estate, to the exclusion of the younger son: (Will. Real Pro. 99, 9th edit.; Hallilay's Digest, 296, 7th edit.)

(2.) *Coparceners*, or, more shortly, parceners, are two or more persons who together form an heir. They are usually females: (Will. Real Pro. 99, 9th edit.; Hallilay's Digest, 169, 7th edit.)

(3.) *Escheat* is the resulting back to the lord of the fee of lands of which a tenant dies seised in fee simple, intestate, and without heirs. In order to complete his title, the lord must enter on the lands escheated. Escheats are frequently divided into those *propter defectum sanguinis*, and those *propter delictum tenentis;* the former occurring when the tenant dies without heirs, and the latter when his blood is attainted: (Will. Real Pro. 121, 9th edit.; Hallilay's Digest, 298, 7th edit.)

(4.) *Estoppel* is the precluding of a person in law from alleging or denying a fact in consequence of his own previous act, allegation or denial to the contrary. It may arise (*a*) either from matter of record, such as a fine or recovery; or (*b*) from the deed of the party, as, if the deed recited a fact, the party averring it cannot afterwards deny that fact; or (*c*) from matter *in pais, i.e.*, matter of fact, as if an infant make a lease and accept rent after he comes of age: (Will. Real Pro. 378, 9th edit.; Hallilay's Digest, 8, 254, 7th edit.)

(5.) *Disgavelled* is the freeing by Act of Parliament of lands from the custom of gavelkind: (Will. Real Pro. 125, 9th edit.)

OF THE TENURE OF AN ESTATE.

Q.—What is a manor, and how created? How are lands held in it by the lord's tenants? (*a*)

A.—A manor is a lord's estate, in lands either freehold or copyhold, granted out to tenants within a certain district. They arose thus: originally they were a district of ground held by a lord, who kept such parts as were necessary for his own use, and distributed some to freehold tenants to be held of him in perpetuity. Other parts were held in villenage (which now forms copyhold manors), and the residue, being uncultivated and waste, served as common of pasture to the cattle of the lord and his tenants. On the grant either to the freemen or villeins the tenants acknowledged the baron as their lord, and rendered him services according to the nature of their tenancy. All manors must have been created before 18 Ed. 1, c. 1. Lands within a manor are held by copy of Court Roll and in construction of law *at the will* of the lord of the manor, according to the custom of the manor: (1 Steph. Com. 206, *et seq.*, 3rd edit.; Will. Real Pro. 115, 9th edit.; Hallilay's Digest, 181, 7th edit.)

Q.—Why is it generally necessary that a manor should have existed from a date earlier than that of a certain statute of Edward I., called the statute *Quia Emptores?*

A.—Because that statute forbids sub-infeudation, or any one making himself the lord of an estate in fee simple: (Will. Real Pro. 115, 9th edit.)

Q.—State the incidents of gavelkind tenure as to descent, escheat, and dower. (*b*)

A.—The lands descend to all the sons, instead of the eldest; or brothers or other collateral relations on failure of nearer heirs. There never was

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(*a*) Twice. (*b*) Four.

any escheat or attainder for murder. The widow is dowable of a moiety of the lands, but only while she remains unmarried and chaste: (1 Steph. Com. 218, 5th edit.; Will. Real Pro. 124, &c., 9th edit.; Hallilay's Digest, 150, 7th edit.)

Q.—Can a mother appoint a guardian to her infant children?

A.—The stat. 12 Car. 2, c. 24, only allows the father, and not the mother, to appoint a testamentary guardian to an infant: (Will. Real Pro. 119, 9th edit.; Hallilay's Digest, 383, 7th edit.)

JOINT TENANTS AND TENANTS IN COMMON, ETC.

Q.—Define separately (1) an estate in joint tenancy; (2) a tenancy in common; and (3) an estate in coparcenary.

A.—Joint tenancy arises where several owners have with respect to all other persons than themselves the properties of one single owner. They have unity of possession, interest, title, and time in the commencement of their title. Tenants in common are such as have unity of possession, but distinct and several titles to their estate. An estate in coparcenary arises when a man dies intestate, leaving two or more females as his heir. They have unity of possession and title: (1 Steph. Com. 344, *et seq.*, 5th edit.; Will. Real Pro. 128, *et seq.*, 9th edit.; Hallilay's Digest, 169–172, 7th edit.)

Q.—Describe the differences and similarities between a joint tenancy in fee and a tenancy in common in fee, and state why trustees should always be made joint tenants.(*a*)

A.—Joint tenants have the four unities just enumerated, while tenants in common need only unity of possession. Among joint tenants there is also the benefit of survivorship, but not amongst tenants in common. Trustees should always be made joint tenants, because on the decease of one of them the whole estate then vests at once in the survivors or survivor of them without devolving on the heir-at-law of the deceased trustee, and without being affected by any disposition which he may have made by his will: (see further 1 Steph. Com. ch. 8; Will. Real Pro. ch. 6; Hallilay's Digest, 169, 170, 7th edit.)

Q.—Suppose A., B., and C. are joint tenants in fee, and A. conveys to D. his share in the land, and then B. dies, in what shares are the land now held?

A.—By A. conveying his share (a third) in the land to D., D. becomes tenant in common to the extent of A.'s share as regards B. and C. Between B. and C. the joint tenancy will still exist, and therefore on B.'s death, without severing such joint tenancy, C. will become absolutely entitled to the two-thirds of the land, and will be tenant in common to that extent with D.: (Will. Real Pro. 130–133, 9th edit.; Hallilay's Digest, 171, 7th edit.)

Q.—What is a deed of partition? And what amendments have lately been made in the law relating to a partition?

A.—A deed of partition is a private arrangement whereby joint tenants, tenants in common, or coparceners, agree to a division of lands or tenements. By the 31 & 32 Vict. c. 40, where a decree of partition may be made, and it appears that a sale of the property and a distribution of the proceeds would be more beneficial than a partition, the court may, on the request of any of the parties interested, direct a sale accordingly; and the court shall, on the application of the parties to the extent of one moiety or

(*a*) Thrice.

upwards in the property, unless it sees good reason to the contrary, direct a sale: (Will. Real Pro. 100, 134, &c., 9th edit.; Hallilay's Digest, 260, 372, 7th edit.)

Q.—What are coparceners of an estate? and when there are three or more will the law oblige them to make partition if one should require it?

A.—Coparceners have been defined *ante.* They are the only kind of joint owners to whom the ancient common law granted the power of severing their estates without mutual consent, and that power is still retained to each of them. And see preceding answer: (Will. Real Pro. 99, 9th edit.)

OF A FEOFFMENT.

Q.—What is a feoffment, and what is necessary to perfect it?

A.—A feoffment is a conveyance passing freeholds lands. To perfect it livery of seisin is necessary: (Will. Real Pro. 136, 9th edit.; Hallilay's Digest, 258, 7th edit.)

Q.—What are the essential words of an *habendum* in fee?

A.—In every conveyance, except a will, the word "heirs" is necessary to be used to mark out or pass a fee: (Will. Real Pro. 140, 9th edit.; Hallilay's Digest, 261, 7th edit.)

Q. State the requisite words to confer by deed the following estates, viz. (1) An estate in fee on A. B.; (2) An estate on A. B. and C. D. as joint tenants; (3) An estate on A. B. and C. D. as tenants in common. And in the two latter cases, the effect of the death of one of the two tenants?

A. (1) A grant unto, and to the use of A. B. *and his heirs,* or his heirs and assigns for ever; (2) A grant unto and to the use of A. B. and C. D. *and their heirs*; (3) A grant unto and to the use of A. B. and C. D., their heirs and assigns, as tenants in common.

On the death of either A. B. and C. D., in the second case, the whole interest in the land will vest in the survivor, it being a joint tenancy; but in the third case on the death of either party, his interest will devolve on his heir or devisee: (Will. Real Pro. 130, 133, 140, 9th edit.; Hallilay's Digest, 152, 225, 261, 7th edit.)

Q.—For the transfer of an estate in fee simple (at law and in possession), must there be a writing? and if so, when and how did the necessity for it arise?

A.—A writing, and in most cases a deed, is necessary for this purpose. This became necessary on account of the many frauds committed by allowing estates to pass without writings. So the 29 Car. 2, c. 3, usually styled the Statute of Frauds, required a writing to be used; and where this statute requires a writing (except in one or two cases, such as wills) the 8 & 9 Vict. c. 106, requires a deed: (Will. Real Pro. 147, *et seq.* 9th edit.)

Q.—Supposing a writing to be necessary, must it be a deed?

A.—See preceding answer.

USES AND TRUSTS.

Q.—What is the effect of the Statute of Uses? and how was its intended operation nullified?*(a)*

A.—Its effect is to transfer uses into possession, by enacting that when one person is seised of lands, &c., to the use, confidence, or trust of another, the latter shall thenceforth have the same estate in the land in possession as he before had in the use only. Its operation was nullified

(*a*) Twice.

because it was held that the statute could only execute the first use, and that if a use was limited or engrafted upon a use, the statute did not execute the latter use, but that it remained a trust to be enforced in equity only: (27 Hen. 8, c. 10; 1 Steph. Com. 369, 5th edit.; Will. Real Pro. 153, 9th edit.; Hallilay's Digest, 222, 328, 7th edit.)

Q.—A conveyance to A. and his heirs in trust for B. and his heirs. Has A. any and what estate?

A.—No; A. takes no estate under the conveyance, for the Statute of Uses transfers everything from him and his heirs to B. and his heirs the moment the deed is executed: (Will. Real Pro. 153, *et seq.*, 9th edit.; 1 Steph. Com. 371, 5th edit.; Hallilay's Digest, 226, 7th edit.)

Q.—By what words can you by one deed give to A. a legal estate in fee simple in land, and to B. an equitable estate in fee simple in the same land?

A.—A grant unto and to the use of A. and his heirs in trust for B. and his heirs: (Will. Real Pro. 156, 9th edit.; Hallilay's Digest, 226, 7th edit.)

Q.—A gift unto and to the use of A. to the use of B.; what estate, if any, has A?

A.—A. takes the legal estate and holds it for the benefit of B., who has the equitable estate. For here A. is seised to his own use and the use limited to B. is necessarily a use upon a use, which the Statute of Uses will not execute: (see references *supra.*)

Q.—Describe an equitable estate in land, and how it may arise otherwise than by deed or will; and by what, if any, means transferable, distinct from conveying lands?

A.—An equitable estate in land is the beneficial interest in or enjoyment of it, unattended with the possessory and legal ownership thereof. An equitable estate in fee may arise under a *contract* for purchase as soon as it is signed by the vendor, by construction of equity without any deed or will. An equitable or trust estate may be transferred by any writing, although, in practice, it is usual to have a deed: (Will. Real Pro. 157–160, 9th edit.; Hallilay's Digest, 151, 7th edit.)

Q.—Conveyance to A. and his heirs to the use of B. and his heirs in trust for C. and his heirs. C. dies intestate and without heirs. To whom does the beneficial interest in the estate then belong? In whom is the legal estate vested?(*a*)

A.—The legal estate is in B.; and on the death of C. intestate and without heirs the beneficial interest will devolve upon B. the trustee, who holds the land discharged from the trust which has failed; for a trust is a mere creature of equity and not a subject of tenure: (Will. Real Pro. 160, 9th edit.)

MODERN CONVEYANCE.

Q.—Describe the mode of conveying freehold property in use prior to the modern Real Property Acts.

A.—Soon after the passing of the Statute of Uses (27 Hen. 8, c. 10), the lease and release came into use as the mode of transferring freehold property in possession, the lease being by bargain and sale under the Statute of Uses. This mode was used up to 1841, when a release was made as effectual as a lease and release; and in 1845 a deed of grant was rendered sufficient for this purpose (Will. Real Pro. ch. 9, pt. 1; Hallilay's Digest, 257, 7th edit.)

Q.—What was the purport of the first Act of Parliament which pro-

(*a*) Twice.

duced an innovation in the former modes of conveying freehold property, and what changes have since taken place?

A.—See preceding answer.

Q.—Sketch the outline of an ordinary purchase deed?

A.—1. Date. 2. The parties. 3. The recitals. 4. The testatum or witnessing part. 5. The parcels and general words. 6. The *habendum*. 7. The covenants for title, viz., *(a)* The vendor has good right to convey; *(b)* For quiet enjoyment; *(c)* Free for incumbrances; and *(d)* for further assurance. The deed must also be signed, sealed, and delivered, and the attestation and the receipt for the purchase money endorsed. In the Register Counties, a memorial of the deed must be registered: (Will. Real Pro. 182, &c., 9th edit.; Hallilay's Digest, 259, 7th edit.)

Q.—What are the requisites for a contract for sale of lands?

A.—The 4th section of the Statute of Frauds enacts that no action shall be brought upon any contract respecting lands, &c., unless the contract be in writing, signed by the party to be charged therewith, or his authorised agent. But Courts of Equity, notwithstanding this enactment, will enforce contracts not so reduced into writing where they are admitted by the defendant's answer, or prevented from being reduced to writing by his fraud, or where there has been a part performance. The party contracting must not be under disability to contract, and in order that the agreement may be given in evidence in any Court, it must bear a sixpenny agreement stamp: (Will. Real Pro. 162, 9th edit.; Hallilay's Digest, 229, 7th edit.)

Q.—What are the principal requisites to the validity of a deed? and what should be done in connection therewith if the land conveyed lies in Middlesex or Yorkshire?

A.—They are (1) that the parties to it be able to contract; (2) that it be written or printed on paper or parchment; (3) that it be sealed and delivered, and in most cases signed; and (4), though not always absolutely necessary, that it be signed in the presence of witnesses: (1 Steph. Com. ch. 16; Hallilay's Digest, 259, 7th edit.) If the lands are situate in Middlesex or Yorkshire, a memorial of the deed should be registered in the local registry: (Will. Real Pro. 186, 9th edit.; Hallilay's Digest, 263, 7th edit.)

Q.—In a conveyance on the sale of land in fee to a purchaser, what is the *testatum* and what the *habendum?* and what is the substance of the covenants for title?

A.—The *testatum*, or witnessing part, contains the consideration and receipt thereof, and the operative words. The *habendum* is used to limit or mark out the estate of the grantee. The covenants are that the vendor has good right to convey, for quiet enjoyment, free from incumbrances, and for further assurance: (Will. Real Pro. 182, *et seq.*, 9th edit.; Hallilay's Digest, 259, 7th edit.)

Q.—What is the form of conveyance to trustees of a school?

A.—The conveyance is generally in the form of a deed poll, and contains provisions for the management of the school. Its execution must be attested by one witness, and if there be no valuable consideration it requires enrolment to give it validity: (Hallilay's Digest, 235, 7th edit.; and for a form see David. Conv.; see also Will. Real Pro. 73, 74, 9th edit.)

Q.—What is the proper operative word used in a conveyance of real estate to vest such estate in the purchaser?

A.—In a deed of grant the word "grant" is the proper word. In a feoffment, the word "give." In a bargain and sale, the words "bargain

and sell." In a release they are "grant, bargain, sell, release, and confirm." But a deed of grant is now almost universally adopted: (Will. Real Pro. 193, 9th edit.)

Q.—Write out the form of attestation to a deed.

A.—"Signed, sealed, and delivered by the within-named A. B. in the presence of" [*state name of witness*].

Q.—What is the use in conveyances of the general words at the end of the parcels, of all ways, commons, &c., enjoyed with the premises?

A.—To pass such rights of common, ways, &c., as have been usually enjoyed with the land, though not strictly appurtenant. For if such be the case such rights of way, common, &c., would not pass by a conveyance of the land "with the appurtenances" merely: (Will. Real Pro. 313, 9th edit.)

Q.—By bargain and sale duly enrolled, a fee simple estate is duly conveyed to A. and his heirs to the use of B. and his heirs. In whom is the legal estate by such conveyance vested?

A.—In A. and his heirs; and B. and his heirs have but an equitable interest. Because by the effect of the bargain and sale the alienee has but a use, which is turned into a legal estate by the Statute of Uses, and the use to B. and his heirs is a use upon a use, which the statute cannot execute: (1 Steph. Com. 373, 5th edit.; Hallilay's Digest, 224, 7th edit.; Will. Real Pro. 175, 194, 9th edit.)

WILLS.

Q.—What is requisite for the due execution of a will?(*a*)

A.—It must be signed by the testator, or by some person in his presence, and by his direction. And such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, who must attest and subscribe the will in the presence of the testator: (1 Vict. c. 29, s. 9.) The will need not be signed strictly at the foot or end, provided it is apparent on its face that the testator intended to give effect to it as his will: (15 & 16 Vict. c. 24; Will. Real Pro. 196, 9th edit.; Hallilay's Digest, 277, 7th edit.)

Q.—How many witnesses are necessary to the valid execution of a will, and is there now, or was there formerly any difference in the number required for a will disposing of real estate and for one disposing of personal estate only?

A.—By the Wills Act, 1837, two witnesses are required in the testamentary disposition of both descriptions of property. Previous to the passing of this Act, three witnesses at least were required to a will of real estate, but none were necessary to one of personal estate only: (Will. Real Pro. 196, 9th edit.; Hallilay's Digest, 278, 7th edit.)

Q.—Write out the form of attestation to a will.

A.—"Signed by the said A. B. the testator, as and for his last will and testament, in the presence of us present at the same time, who, in his presence, in the presence of each other, and at his request have subscribed our names as witnesses:" (Hallilay's Digest, 278, 7th edit.; Hayes and Jarm. Conc. Forms of Wills, 121, &c., 6th edit.)

Q.—Supposing a legatee, or a creditor, where the will contains a charge for the payment of the testator's debts attests the will, does this affect the validity of the will?

A.—No; creditors, even when the will contains a charge for payment

(*a*) Twice.

of debts, are good witnesses. So a legatee is a good witness, but he loses his legacy: (1 Vict. c. 26, ss, 14, 15, 16; Will. Real Pro. 198, 199, 9th edit.; Hallilay's Digest, 277, 7th edit.)

Q.—Is it necessary that the attesting witnesses to the will be credible?

A.—No; and the incompetence of the witness at the time of the execution of the will, or at any time afterwards, is not sufficient to invalidate the will: (Will. Real Pro. 198, 9th edit.; Hallilay's Digest, 277, 7th edit.)

Q.—How can the revocation of a will be now effected? (*a*)

A.—By marriage; or by another will, or codicil, or writing duly executed declaring an intention to revoke; or by burning, tearing, or otherwise destroying the will, *animo revocandi:* (Will. Real Pro. 200, 9th edit.; Hallilay's Digest, 279, 7th edit.)

Q.—Is a will revoked by the subsequent marriage of the testator?

A.—Yes; unless made in exercise of a power of appointment, when the property thereby appointed would not in default of such appointment pass to his heir, next of kin, &c.: (Will. Real Pro. 200, 9th edit.; Hallilay's Digest, 280, 7th edit.)

Q.—If a person acquires land after he has made his will, does such land pass under a general devise?

A.—Yes; a will now speaks from the death of the testator, and passes land acquired after the execution thereof: (Will. Real Pro. 201, 9th edit.; Hallilay's Digest, 281, 7th edit.)

Q.—Give an example of a lapsed devise, and mention the two cases in which the 1 Vict. c. 26, gives effect to devises and bequests which would have lapsed before the passing of this Act. (*b*)

A.—If lands are devised to A., and his heirs, a stranger, and A. dies in the lifetime of the testator, the devise will lapse, and fall into the residue. But there is no lapse (1) when the devisee of an estate tail, or *quasi* entail, dies in the testator's lifetime, leaving issue inheritable under such entail living at the testator's death; or (2) where a child or other issue is the devisee or legatee (not being for life merely) and dies in the testator's lifetime, leaving issue living at the testator's death: unless in either case a contrary intention appears: (Hallilay's Digest, 282, 7th edit.; Will. Real Pro. 203, 9th edit.)

Q.—Does a devise or bequest in any, and if in any in what, cases lapse by the death of the devisee or legatee in the testator's lifetime?

A.—Yes; see preceding answer.

Q.—A testator gives by his will all his "real estate" to A. B. He also gives his "personal estate" to C. D. State what property will pass under each bequest. Add the usual form of attestation requisite for a will.

A.—Lands of all description capable of being devised will pass under a devise ("bequest" is an incorrect expression) of real property; but not lands held by the testator as mortgagee. All other property, including money secured on mortgage of real estate, will pass to C. D. under a bequest of the personal estate: (Will. Real Pro. 204, 387, 9th edit.; Hallilay's Digest, 284, 7th edit.) The usual form of attestation is given above.

Q.—What is the effect of a devise of real estate to A. without words of limitation; and by what statute is the effect given to such devise?

A.—The effect is now to pass the fee, or other the whole estate which the testator had power to dispose of, to the devisee, by force of 1 Vict.

(*a*) Thrice. (*b*) Twice.

c. 26, s. 28: (Will. Real Pro. 206, 9th edit.; Hallilay's Digest, 284, 7th edit.)

Q.—A testator by his will, made three years ago, devised a house to A. simply. He likewise devised another house to B. and his heirs. Is there any, and if so what, difference in the effect of the two devises? (*a*)

A.—There is now no difference between the two devises, as there was before the 1st of January, 1838. Words of limitation are no longer necessary to pass a fee in a will operating after the above date: (see references *suprà*.)

Q.—What, if any, is the difference in effect of a limitation, "to the use of A. B. and his heirs male," in a deed and will respectively?

A.—In a deed, the limitation confers a fee simple, but in a will gives an estate tail male: (Will. Real Pro. 140, 208, 9th edit.)

Q.—If lands are devised to a person who would otherwise have been the heir at law, does he take them as heir or devisee? (*b*)

A.—As devisee; therefore as a purchaser: (3 & 4 Will. 4, c. 106, s. 3; Will. Real Pro. 210, 9th edit.; Hallilay's Digest, 284, 7th edit.)

Q.—State the general rule or maxim with regard to the construction of wills.

A.—The intention of the testator is to be observed: (Will. Real Pro. 204, 9th edit.; Hallilay's Digest, 234, 7th edit.)

Q.—Under what circumstances is it necessary to apply for letters of administration *cum testamento annexo*? and who is entitled to such grant?

A.—(1) When the testator has neglected to name any executors of his will; or (2) has survived those he appointed; or (3) where the executors refuse to act and renounce probate, and in some few other cases. In the cases mentioned the residuary legatee, if one, is entitled to the grant: (Matt. Exors. 278-280, 2nd edit.; Hallilay's Digest, 281, 7th edit.)

HUSBAND AND WIFE.

Q.—What interest does a husband take in his wife's freehold estates not settled to her separate use?

A.—He has a freehold interest therein during coverture, which gives him a right to receive the rents and profits thereof. He may also, under the 19 & 20 Vict. c. 120, s. 32, lease the land for twenty-one years, which will bind the wife and her representatives; but, subject to this, he cannot convey or charge the land for any longer period than while his own interest continues. But by sect. 8 of the Married Women's Property Act (33 & 34 Vict. c. 93), where any freehold, copyhold, or customary property shall descend upon any woman, married after the passing of the Act (9th August, 1870) as heiress or co-heiress, the rents and profits shall, without prejudice to any settlement, belong to such woman for her separate use, and her receipts alone shall be a good discharge for the same. And under certain circumstances he may be tenant by the curtesy after the wife's death: (Will. Real Pro. 214, *et seq.*, 9th edit.; Hallilay's Digest, 186, 7th edit.)

Q.—What interest does marriage confer upon a husband (*a*) in lands of which his wife was seised in fee, and (*b*) in goods and chattels passing by delivery of which she was possessed at the time of her marriage?

A.—(*a*) This has been explained in the preceding answer. (*b*) The goods

(*a*) Twice. (*b*) Thrice.

and chattels will become the absolute property of the husband, the Married Women's Property Act, 1870, only applying to property devolving upon her after marriage.

Q.—If land be given to husband and wife and their heirs, what estate do they take, and how can it can be disposed of in the lives of both; and if not disposed of during their joint lives, how would it go on the death of either?

A.—As husband and wife are considered in law one person, they are said to take by *entireties*. In order to convey the land during their joint lives both must join in conveying (and the wife must acknowledge the deed.) After the death of either of them, the land will vest in the survivor, who will be the proper person to convey: (Will. Real Pro. 217, 9th edit.; Hallilay's Digest, 170, 7th edit.)

Q.—What is an estate by the curtesy?

A.—An estate by the curtesy is one which a man holds for life on the death of his wife in the lands of which she was seised during marriage in fee or in tail, provided he had issue by her born alive during the marriage, and capable of inheriting: (Will. Real Pro. 218, 9th edit.; Hallilay's Digest, 194, 7th edit.)

Q.—A woman being owner in fee in possession of land marries without a settlement. State fully how the land may be effectually vested in a purchaser.(*a*)

A.—The land must be conveyed to the purchaser by deed, in which the husband and wife must join. The wife must (apart from her husband) acknowledge the deed as her free act before a judge of the Superior or County Court, or two commissioners(*b*): (Will. Real Pro. 222, 9th edit; Hallilay's Digest, 188, 7th edit.)

Q.—May property be settled to the separate use of a married woman, and also be made inalienable by anticipation? if so, give the form in which such a trust is created.

A.—Property may be settled to the separate use of a married woman, and she may, during the coverture, be restrained from alienating it or even anticipating the income thereof. The property should be vested in trustees to the use of the wife for life, and during coverture for her separate use, and so that she shall not have power to dispose of or anticipate the same in any way, &c.: (Will. Real Pro. 215, 9th edit.; 2 Prid. Conv. 349, &c., 4th edit.; Hallilay's Digest, 188, 190, 7th edit.)

Q.—Explain the term "dower," and add full particulars of the widow's interest in such a case. Explain the nature of the wife's separate estate, and add the proper words for conferring such an interest, and can she dispose of it by will?

A.—Dower is an estate for life to a widow of the lands of inheritance of her husband, of which he was solely seised, and of which land any issue she might have had might have inherited. Full particulars of such interest are given below: (Will. Real Pro. 223, 227, 9th edit.; Hallilay's Digest, 192, 7th edit.)

Separate estate is property which a married woman, under certain circumstances, is entitled to retain for her separate and independent use, and free from the control of her husband. She can dispose of the same by will without the concurrence of her husband. The usual words for

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(*a*) Twice.

(*b*) Mr. Williams also states that the acknowledgment may be taken by a Master in Chancery, but there are now no such officials.

conferring such an estate on a married woman are "for her sole and separate use": (Will. Real Pro. 214, &c., 9th edit.)

Q.—In regard to what women does the old dower law still continue in force?

A.—To women married on or before the 1st January, 1834: (3 & 4 Will. 4, c. 105; Will. Real. Pro. 223, 9th edit.; Hallilay's Digest, 192, 7th edit.)

Q.—What are the rights of a widow, in her deceased husband's estate in fee simple, at law and in equity—(1) supposing them to have been married before the 2nd of January, 1834; and (2) supposing them to have been married on or after that date?

A.—A widow married on or before the 1st of January, 1834, is entitled to an estate for life in a third part of her husband's lands of inheritance of which he was solely seised at *any time* during coverture, and of which any issue she might have had might have inherited. And this dower has preference over all the conveyances, incumbrances, and debts of the husband. If married since this date, the dower is also a third, but only attaches at the *death* of the husband. And all his conveyances, incumbrances, and debts have priority over the dower. But at common law the wife is not entitled to dower out of equitable estates, whereas under the statute she is: (Will. Real Pro. 223, 9th edit.; Hallilay's Digest, 192, 7th edit.; 1 Steph. Com. 272, 5th edit.)

Q.—Has the husband any and what power of alienation, and any and what power of leasing over the wife's estate in fee simple? And what power, if any, has the wife over such estate; and by what means can such power be exercised?

A.—This question has been fully answered in preceding answers in this chapter, to which the student is referred.

Q.—What is an estate by the curtesy of England, and in what respects does it differ in the counties of Kent and Sussex?(*a*)

A.—An estate by curtesy is one given to a husband by the law for his life on the death of his wife, in the lands of inheritance of which she was solely seised, provided he had issue by her born alive during the marriage capable of inheriting her estate. In Kent, the husband is entitled to curtesy whether he has issue born or not; but it is only of a moiety, and ceases if he marries again: (Will. Real Pro. 218, 9th edit.; Hallilay's Digest, 194, 7th edit.; 1 Steph. Com. 269, 5th edit.)

Q.—Define the terms dower and freebench.

A.—Dower has already been defined: (see *suprà*.) Freebench is the wife's dower in copyholds, given only by the custom of the manor: (Will. Real Pro. 368, 9th edit.; Hallilay's Digest, 194, 7th edit.)

Q.—What is jointure?

A.—An estate for life given to the wife under a conveyance or settlement, to take effect in possession immediately after the husband's death, and is in lieu of dower: (Will. Real Pro. 226, 9th edit.; Hallilay's Digest, 193, 7th edit.)

REVERSIONS AND REMAINDERS.

Q.—Describe and show the difference between a reversion and a vested remainder.(*a*)

A.—A reversion is the residue of an estate left in the grantor to commence in possession the moment the prior estate determines. It arises by

(*a*) Twice.

operation of law. A vested remainder is a present estate always ready to come into possession the moment the prior estate determines. It arises by the act or limitation of the parties. Again, between the particular tenant and the reversioner a tenure exists; not so, however, between the particular tenant and the remainderman: (Will. Real Pro. 231, 232, 9th edit.; 1 Steph. Com. 324, 330, 5th edit.; Hallilay's Digest, 165, 7th edit.)

Q.—What is the difference between a remainderman and a reversioner?

A.—See preceding answer and text books referred to.

Q.—State the difference between a reversion and an escheat.

A.—As before shown, a reversion is the residue of an *estate* left in the grantor, which comes into possession on the determination of the particular estate granted out by him. And this reversion might be of the fee, or of an estate for life, or for years; whereas escheat is the resulting back of an estate in *fee simple* to the lord of the fee by reason of the *lordship or seigniory* in him, when the tenant dies without heirs and intestate, or when his blood is attainted: (1 Steph. Com. 319, 437, 438, 5th edit.; Will. Real Pro. 121, 231, 9th edit.; Hallilay's Digest, 165, 298, 7th edit.)

Q.—What is the rule in Shelley's case?

A.—Whenever an estate of freehold is given and by the same conveyance or will an ulterior estate (whether mediately or immediately) is limited to the heirs of the same person in fee or in tail, such ulterior estate vests in that person himself in the same manner as if it had been expressly given to him and his heirs—the word "heirs" being a word of limitation and not of purchase: (Will. Real Pro. 249, 9th edit.; Hallilay's Digest, 167, 7th edit.)

Q.—Give a short familiar illustration of the rule in Shelley's case.

A.—A limitation by deed or will to A. for life, and after his death to B. for life, and after the death of B. to the right heirs of A. A. takes an estate in fee simple under this rule; the word heirs being construed as a word of limitation: (1 Steph. Com. 339, 5th edit.; Will. Real Pro. 246, 9th edit.; Hallilay's Digest, 167, 7th edit.)

Q.—Define a contingent remainder, and give an example.(*a*)

A.—According to Mr. Williams, "as distinguished from an executory interest, it is a future estate, which waits for and depends on the determination of the estates which precede it; but as distinguished from a vested remainder, it is an estate in remainder, which is not ready from its commencement to its end, to come into possession at any moment the prior estate may happen to determine." As, if land be given to A. for life, and after his death to the first son of B., who has then no son born: (Will. Real Pro. 257, 9th edit.; Hallilay's Digest, 166, 7th edit.)

Q.—Give an instance of a contingent remainder and a vested remainder respectively.

A.—An example of a contingent remainder is given in the preceding answer.

If lands be granted or devised to A. B. for life and after his decease to C. D. and his heirs, the interest of C. D. is said to be a vested remainder: (Will. Real Pro. 243, 9th edit.; Hallilay's Digest, 165, 7th edit.)

Q.—What is the rule against perpetuities?

A.—The rule against perpetuities is one which prohibits real or personal property from being tied up for a longer period than the lives of existing persons and twenty-one years after their decease, allowing a

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(*a*) Twice.

further time for gestation if it actually exists: (Hallilay's Digest, 288, 7th edit.; Will. Real Pro. 50, 263, 9th edit.)

Q.—What is the longest period for which lands can be settled supposing them to be incumbered with debt?(*a*)

A.—This question is answered by the above. The fact of incumbrances can make no difference on this point. It must, however, be remembered that the 39 & 40 Geo. 3, c. 98 (creating the rule against perpetuities), does not extend to any provision for payment of debts, or raising portions for children: (Will. Real. Pro. 306, 9th edit.; Hallilay's Digest, 288, 9th edit.)

Q.—State the effect of the law as to the destruction of contingent remainders, and how formerly prevented; also mention, as near as you can, the statute which made an alteration as to their destruction and its effect.

A.—Such remainders were not only liable to destruction by the natural determination of the prior estate for life, but also by its premature destruction by forfeiture, surrender, or merger before the contingency happened. This was formerly prevented by vesting in trustees an estate to come into possession on such premature determination, and to continue during the life of the tenant for life, and for his use. By the 8 & 9 Vict. c. 106, however, a contingent remainder is capable of taking effect notwithstanding the forfeiture, surrender, or merger of the prior estate of freehold: (Will. Real Pro. 268, 9th edit.; 1 Steph. Com. 335, 339, 5th edit.; Hallilay's Digest, 168, 7th edit.)

Q.—In respect of what property is succession duty payable?(*a*)

A.—When by any disposition or devolution of property, real or personal, any person becomes beneficially entitled thereto or the income thereof upon the death of any person either immediately or after any interval: (Will. Real Pro. 275, 298, 9th edit.; Hallilay's Digest, 252, 7th edit.)

EXECUTORY INTERESTS.

Q.—What is the meaning of the word "executory," and by what instrumentality can an executory interest be created, and within what length of time must it arise?(*a*)

A.—An estate is said to be executory when it is merely a future interest, which may or may not arise, but which is in its nature indestructible. It arises, when its time comes, of its own inherent strength, and does not depend for protection on any prior estate, but often puts an end to such prior estate. It arises either under the Statute of Uses or by Will. An executory interest must commence within the period of any fixed number of existing lives, and an additional term of twenty-one years, allowing further for the period of gestation if it actually exists. The twenty-one years may be independent or not of the minority of any person to be entitled, and if no lives are fixed on, then the term of twenty-one years only is allowed: (Will. Real Pro. 277, 304, 9th edit.)

Q.—Lands are conveyed to A. and his heirs to such uses as he shall appoint; A. appoints the lands to the use of himself in fee. What estate, if any, has A. in the lands?

A.—He takes the fee simple in the lands: (Will. Real Pro. 282, 9th edit.)

Q.—An estate stands limited to such uses as A. B. shall by deed or will

(*a*) Twice.

executed by three or more persons, appoint. A. B. by his will executed as required by the Wills Act, but in the presence of two witnesses only, assumed to exercise the power. Is this will a valid execution of the power?

A.—Yes, as the 10th section of the Wills Act expressly enacts that every will executed in the manner thereby required, shall so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity: (Will. Real Pro. 287, 9th edit.; Hallilay's Digest, 275, 7th edit.)

Q.—If lands be conveyed to such uses as B. shall appoint, and in default of and until such appointment to C. and his heirs, what are the interests of B. and C. respectively?

A.—C. here has a vested estate in fee, but subject to be destroyed at any moment by the exercise by B. of the power of appointment. B. has no interest in the land. He has simply the power, but there is nothing to prevent him from appointing to himself, so as to become the absolute owner of the property: (Will. Real Pro. 282, 9th edit.; Hallilay's Digest, 227, 7th edit.)

Q.—If lands be limited to such uses as A. shall appoint, and in default of appointment to A. and his heirs, and he makes a partial disposition of his interest, what effect has that on his power?

A.—It is a suspension of his power to the extent of the interest created; for no man can derogate from his own grant: (Will. Real Pro. 290, 9th edit.; Hallilay's Digest, 227, 7th edit.)

Q.—What are the usual provisions of a power of sale and exchange?(*a*)

A.—That it shall be lawful for the trustees of the settlement, with the consent of the tenant for life in possession under the settlement (and sometimes also at their discretion, when such tenant is an infant), to sell or exchange the settled lands, and for that purpose to revoke the uses of the lands sold or exchanged, and to appoint other uses in their stead to effectuate the transaction. The money to arise from such sale, or for an equality of exchange, to be laid out in the purchase of other lands, to be settled to the like uses as the lands sold or exchanged; and that until such settlement the money is to be invested and the interest thereof paid to the persons entitled to the rents of the new lands if purchased: (Will. Real Pro. 294, 9th edit.)

HEREDITAMENTS PURELY INCORPOREAL.

Q.—Incorporeal hereditaments are appendant, appurtenant, and in gross; explain the difference between them, and give instances of each.(*b*)

A.—Incorporeal hereditaments appendant arise as an incident of *tenure*, as where the occupiers of *arable* land holden of a manor have a right to pasture their commonable cattle on the wastes of the manor. Appurtenant incorporeal hereditaments arise not because of tenure, but by grant or prescription: as if A., the owner of land in fee, grants part of it to B., a stranger, and a right of way incident thereto over the remaining part of A.'s estate. If either of the above incorporeal hereditaments become severed from the land, they become incorporeal hereditaments in gross: (1 Steph. Com. ch. 23; Will. Real Pro. ch. 4, pt. 2.)

Q.—Describe an easement, and give examples.

A.—An easement is a right which tends rather to the convenience than

(*a*) Thrice. (*b*) Twice.

the profit of the claimant; as a right of way or of water: (1 Steph. Com. 656, 5th edit.; Hallilay's Digest, 174, 7th edit.)

Q.—Define a rent-charge, and say how it is created and secured, and what estates can be had in it.

A.—It is a rent or other annual sum charged upon land. Being an incorporeal hereditament, it must be created by deed of grant, unless it be given by will. The payment is secured by powers of distress and entry, in the deed creating it. There may be an estate for life, or in tail, or in fee therein: (Will. Real Pro. 314, 317, 9th edit.; Hallilay's Digest, 173, 174, 7th edit.)

Q.—Can a rent-charge be created by a writing not under seal, or by a will?

A.—It may be created by a will, but not by a writing not under seal by act *inter vivos;* for it is an incorporeal hereditament, which requires a deed of grant for its creation: (Will. Real Pro. 315, 9th edit.; Hallilay's Digest, 173, 7th edit.)

Q.—Is an express power of distress necessary for the security of a rent-charge, and if not, why not?

A.—Formerly it was, and if it were omitted, it was considered only a rent-seck (or a dry and barren rent). But by 4 Geo. 2, c. 28, powers of distress have been attached to rents seck, and hence a rent-charge does not now require an express power to distrain, although it is usual to give it: (Will. Real Pro. 318, 9th edit.; Hallilay's Digest, 174, 7th edit.)

Q.—What is an advowson, and what right does it confer on its owner?

A.—An advowson is the perpetual right of presentation to a church or ecclesiastical benefice. The owner or patron has no interest in the tithe or glebe, merely a right of nomination from time to time as the living becomes vacant: (Will. Real Pro. 325, 9th edit.; Hallilay's Digest, 176, 7th edit.)

Q.—What is the difference between a rector and a vicar?

A.—A rector of an unappropriated advowson is a spiritual person, having the cure of souls and an *exclusive* title to all the tithe and glebe, &c. But if the advowson had been appropriated, then the rector might be either lay or ecclesiastical, and there would also be a vicar who would have the cure of souls within the parish, and take only a *portion* of the tithes, &c.: (3 Steph. Com. 70, *et seq.*; Will. Real Pro. 328, 9th edit.; Hallilay's Digest, 177, 7th edit.)

Q.—What constitutes the offence of simony?

A.—It is the corrupt presentation of any one to an ecclesiastical benefice for money, gift, or reward; so called from the resemblance it is said to bear to the sin of Simon Magus: (1 Steph. Com. 77, 5th edit.; Will. Real Pro. 329, 9th edit.; Hallilay's Digest, 180, 7th edit.)

COPYHOLDS.

Q.—What is a copyhold estate?

A.—An estate holden by copy of court roll, and in construction of law at the will of the lord of the manor to which it belongs, according to the custom of the manor: (Will. Real Pro. pt. 3, ch. 1; 1 Steph. Com. ch. 22; Hallilay's Digest, 181, 7th edit.)

Q.—Copyholds of inheritance are said to be held at the will of the lord, in whom the legal estate is vested; why cannot the lord eject the copyholder at his pleasure?

A.—Long custom and continued indulgence having gradually grown up into a right, the courts in the reign of Edward IV. gave to the tenant a right of action against the lord on eviction without just cause: (Will. Real Pro. 335, 9th edit.)

Q.—Describe the incidents of copyhold tenure.(*a*)

A.—The usual incidents are fines, rents, heriots, suit of court, escheat, and forfeiture to the lord, his right to all mines and minerals in the land and timber upon it, the tenant's limited power of leasing and peculiar mode of transferring his estate therein: (see references *supra.*)

Q.—To whom does the timber on copyhold lands belong?

A.—To the lord, even though planted by the tenant. But he cannot enter upon the land to cut it down, without the tenant's leave: (Will. Real Pro. 338, 9th edit; Hallilay's Digest, 184, 7th edit.)

Q.—Can a copyholder grant a lease for any term without the licence of the lord of the manor?

A.—Yes, for one year; or longer, if there be a custom of the manor to that effect: (Will. Real Pro. 338, 9th edit.; Hallilay's Digest, 185, 7th edit.)

Q.—What are customary freeholds and are they held at the will of the lord, and do these last words import an absolute or a limited right of dominion?

A.—These are a peculiar species of copyholds, where the freehold is in the lord; but they are not held at his will as copyholds are, though their incidents are, in general, similar to those of common copyholds. The expression "the will of the lord" is but a limited expression, for it is controlled by the customs of the manor: (Will. Real Pro. 338, 339, 9th edit.; Hallilay's Digest, 183, 7th edit.)

Q.—A., a holder by copyhold, sells his lands, by what means can they be vested in a purchaser?(*b*)

A.—By surrendering them to the lord, who regrants them to the purchaser; and he is thereupon admitted tenant to the lord of the manor: (Will. Real Pro. 358, 9th edit.; Hallilay's Digest, 182, 7th edit.)

Q.—What acts or assurances are necessary for perfecting the title to a copyhold estate—(1) in the case of an heir at law; (2) in the case of sale and purchase; (3) in the case of a mortgage?

A.—(1) To complete the title of an heir he must be admitted tenant to the lord; (2) this is explained *supra*; (3) a mortgage is usually effected by conditional surrender, and the mortgagee does not get admitted unless he wishes to enforce his security: (1 Steph. Com. ch. 22; Will. Real Pro. pt. 3, ch. 1; Hallilay's Digest, 182, 7th edit.)

Q.—By what means may estates tail in copyholds be barred? Distinguish between the mode of doing so; (1) when the entail is legal; (2) when it is equitable.(*a*)

A.—If the entail be legal, it must be barred by surrender; but if equitable, it may be barred either by surrender or deed. The surrender or deed must be entered on the court rolls of the manor within six months after execution. If there is a protector of the settlement, he must consent either by the surrender barring the entail, or by a distinct deed executed at or before such surrender: (Will. Real Pro. 347, 365, 9th edit.; Hallilay's Digest, 185, 7th edit.)

Q.—What is a heriot?

A.—The best beast or other chattel, which, by the custom of some

(*a*) Twice. (*b*) Thrice.

copyhold manors, the lord is entitled to take on the death of his tenant: but the right of the lord is now confined to such a chattel as the customary law will enable him to take: (Will. Real Pro. 350, 9th edit.; 1 Steph. Com. 636, 5th edit.; Hallilay's Digest, 182, 7th edit.)

Q.—In what way can copyhold estates be turned into freehold estates.(*a*)

A.—By enfranchisement; which may now be at the instance of either lord or tenant: (Will. Real Pro. 353, 9th edit.; Hallilay's Digest, 186, 7th edit.)

Q.—How do you frame the will of a copyholder so as to enable the trustees to sell his copyholds without taking admission, and in such a case who may the lord require to be admitted?(*b*)

A.—Instead of devising the copyhold estates to the trustees to sell, the will should contain a mere direction that the trustees should sell the estate, as by so doing, the purchaser will be at once admitted, and the fine and the expense of the admittance of the trustees will be avoided. But if the lord can hold three customary courts for making proclamation for any person having a right to the premises to claim the same and be admitted thereto, he is entitled to seize *quousque, i.e., until* some person claims admittance. In such a case the lord may require the customary heir of the testator to be admitted: (Will. Real Pro. 366, 9th edit.; Hallilay's Digest, 183, 7th edit.)

TERMS OF YEARS.

Q.—Is an estate for a term of 5000 years an estate of freehold, and if not, what is it?

A.—It is not a freehold, but is a chattel real, a species of personal property, savouring of realty: (Will. Real Pro. 8, 370, 9th edit.)

Q.—What are the two principal interests of a personal nature derived from landed property, and why regarded as personal estate?

A.—An estate for years and a mortgage. The reason why leaseholds are regarded as personal property has been explained (*ante*, p. 112). Mortgages are so considered because they form part of the personal estate of the mortgagees: (Will. Real Pro. 370, 9th edit.)

Q.—Define the meaning of the terms emblements and underlessee.

A.—Emblements are various vegetables raised annually by labour, which, although affixed to the soil, are deemed personal property, and on the death of the owner of the land, go to the executor, and not the heir: (Will. Real Pro. 27, 373, 9th edit.; Hallilay's Digest, 180, 7th edit.)

An underlessee is one who himself holds of a lessee, but with whom and the original landlord there is no privity of estate: (Will. Real Pro. 390, 9th edit.; Hallilay's Digest, 203, 7th edit.)

Q.—How, and at what period of his tenancy, can a yearly tenant determine his tenancy?

A.—By giving his landlord six calendar months' notice of his intention to do so; such notice to expire at the end of the current year of the tenancy: (Will. Real Pro. 374, 9th edit.; Hallilay's Digest, 199, 7th edit.)

Q.—Does a lease at an annual rent made to A. B. without limiting any certain time, confer a lease at will or from year to year?

A.—A lease from year to year: (Will. Real Pro. 373, 9th edit.)

Q.—May a lease be made for any and what period, and under what

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(*a*) Thrice. (*b*) Twice.

restrictions as to rent or value, without writing? And, if a writing is necessary, what form of instrument is required?

A.—A lease may be made without writing for a term not exceeding three years from the making, when the rent reserved amounts to two-thirds of the full improved value of the land. If the lease be for a longer period, or at a less rent, a deed is necessary: (Will. Real Pro. 374, 9th edit.; Hallilay's Digest, 195, 7th edit.)

Q.—If a tenant from year to year enter at Ladyday, how long may he continue in possession, if the landlord does not give him notice to quit until October.

A.—Assuming the notice given be to determine the tenancy at the end of the current year of tenancy which should expire next after the end of half a year from the service of the notice, the tenant may continue in possession until the following Ladyday twelvemonths, as he is entitled to a six months' notice expiring on the quarter day on which he entered into possession. Of course, the parties may have contracted for a shorter notice to quit, and to terminate on any particular quarter day. An insufficient notice (as would be a notice given in October for the following Lady-day) will not determine the tenancy: (Woodfall, L. & T., 298, 311, 10th edit.; Will. Real Pro. 374, 9th edit.; Hallilay's Digest, 199, 7th edit.)

Q.—Can a lease of a house be granted by parol, or by writing not under seal for two years at a rack-rent; and does it make any difference if a premium be taken in lieu of half the rack-rent?

A.—Such a lease may be made by parol or by writing not under seal when the rent is a rack-rent; but if the rent does not amount to two-thirds of the full improved value, the lease must not only be by writing but under seal: Will. Real Pro. 374, 9th edit.; Hallilay's Digest, 195, 7th edit.)

Q.—What acts and formalities are now required to give validity to a lease for a longer term than three years? and state by what statutes are these acts and formalities made necessary.

A.—If the lease be for a longer term than three years, &c., the Statute of Frauds (29 Car. 2, c. 3) required it to be in writing. And now the 8 & 9 Vict. c. 106, s. 3, requires such a lease to be by deed: (see references *supra.*)

Q.—What alterations were effected by the 22 & 23 Vict. c. 35, in respect of licences for breaches of covenants contained in a lease?

A.—Before that Act the licence destroyed the covenant; but now such licence extends only to the permission actually given, or the specified breach, or actual assignment, underlease, or other matter thereby specifically authorised to be done; but not so as to prevent proceedings for any subsequent breach, unless otherwise stipulated in such licence. And all rights under covenants and powers of forfeiture and re-entry remain in full force and available against a subsequent breach, &c., not authorised: (Will. Real Pro. 382, 9th edit.; Hallilay's Digest, 202, 7th edit.)

Q.—A. grants a lease to B. for seven years, and when half the time has expired he grants B. another lease for seven years. Is it necessary to have a surrender by deed of the first lease?

A.—No; the granting of the second lease operates as a surrender in law of the unexpired term of the first lease: (Will. Real Pro. 391, 9th edit.)

Q.—What covenants in a lease on the part of the tenant run with the land, so as to be binding on an assignee of the term?

A.—Covenants in a lease which run with the land are those which

directly relate to the premises let, and also those in which the lessee has covenanted for himself *and his assigns*. There must always be a privity of estate between the covenanting parties. Covenants relating to the lands entered into by the lessor also run with the land: (Will. Real Pro. 379, 380, 9th edit; Hallilay's Digest, 242, 7th edit.)

Q.—Does an estate held for 1000 years, if A. and B. so long live, pass to the next of kin, or to the heir-at-law of an intestate?

A.—As this interest is only a term of years (and not a freehold) it will pass to the next of kin of the intestate: (Will. Real Pro. 377, 9th edit.)

Q.—If a term of years in land becomes vested in some person who has the immediate reversion, what is the result?

A.—The term will merge: (Will. Real Pro. 395, 9th edit.; Hallilay's Digest, 306, 7th edit.)

Q.—Can a lessee for 999 years grant a lease for life? and give a reason for your answer.

A.—No; for a lease or estate for life is, in the eye of the law, the greater estate. No freehold can be created out of a leasehold however long: (Will. Real Pro. 395, 9th edit.; 1 Steph. Com. 288, 5th edit.; Hallilay's Digest, 151, 7th edit.)

MORTGAGE.

Q.—What is a mortgage?

A.—At law it is an absolute conveyance, subject to a condition. In equity it is regarded as mere security for a sum of money, and as personal property: (Will. Real Pro. 403, 9th edit.; 1 Steph. Com. 310, 5th edit.; Hallilay's Digest, 207, 7th edit.)

Q.—What is an equity of redemption?

A.—A right which equity gives a mortgagor of redeeming his mortgaged property after the period appointed for repayment of the amount due has passed: (Will. Real Pro. 408, 9th edit.; Hallilay's Digest, 211, 7th edit.

Q.—What right does a mortgagor retain, and how can he enforce it, and when may the right be barred?

A.—He retains his equity of redemption, which right he may enforce by bill in equity. It may be lost by the mortgagor again mortgaging his property without giving notice of the first mortgage to the second mortgagee. Also by lapse of time; *i. e.*, by the mortgagor allowing the mortgagee to keep possession of the property for twenty years without acknowledging the title of the mortgagor: (Will. Real Pro. 408, 433, 9th edit.; Hallilay's Digest, 211, 7th edit.)

Q.—If a landowner having an estate in fee simple at law and in equity, executes a mortgage containing the usual provisions and powers, what title has the mortgagor during the period allowed for repayment; and what title and what remedies has he after default in payment?

A.—This question we have answered in the two preceding answers.

Q.—Describe a mortagee's remedies on non-payment, where he has no power of sale; and can he have the property sold by any means?

A.—He may, after default, evict the mortgagor, or file his bill of foreclosure, or appoint a receiver. By the 23 & 24 Vict. c. 145, a power of sale (with other powers) has been rendered incident to every mortgage. But such power cannot be exercised within a year from the time when the mortgage money becomes payable, or unless the interest is six months

in arrear, &c. No sale is to be made until after six months' notice in writing: (Will. Real Pro. 410, 411, 9th edit.; Hallilay's Digest, 219, 7th edit.)

Q.—What powers have been made incident by statute to a mortgage?

A.—In addition to the power of sale above mentioned, there is also annexed a power to insure against fire, and a power to require the appointment of a receiver, and in default to appoint any person as such receiver. But none of these powers are to be exercised if it be declared in the mortgage deed, that they shall not take effect: (Will. Real Pro. 410, 9th edit.; Hallilay's Digest, 216, 7th edit.)

Q.—If A. mortgage his freehold estate to B. in fee to secure 5000*l.*, and B. dies intestate after the day fixed for repayment of the money, leaving C. his heir at law, and D. administrator to his personal estate, in whom does B.'s interest in the mortgaged estate and the 5000*l.* vest.

A.—The legal estate in the mortgaged property will vest in the heir at law of B., who will, however, be a trustee for the personal representatives of B., the administrator in this case, who is entitled to the 5000*l.*: (Will. Real Pro. 408, 9th edit.; Hallilay's Digest, 213, 7th edit.)

Q.—What are the modes which may be adopted for the mortgage of leasehold premises? And state your reason for preferring one or other of these modes?

A.—A mortgage of leaseholds is either by way of assignment, or underlease. It is usually the latter; as by this method the mortgagee is not liable to the landlord for the payment of the rent and the performance of the covenants in the lease: (Will. Real Pro. 413, 9th edit.; Hallilay's Digest, 208, 7th edit.)

Q.—What is the effect of a deposit of deeds without writing, with a person advancing money to the depositor?

A.—Such a deposit would operate as an equitable mortgage of the estate of the depositor in the lands comprised in the deeds: (Will. Real Pro. 414, 9th edit.; Hallilay's Digest, 208, 7th edit.)

Q.—State concisely the usual contents and covenants in a mortgage of a freehold estate by A. B. to C. D., E. F., and G. H., being trustees lending money.

A.—The parts of a mortgage deed are set out below. There will also be a declaration that the money is advanced by C. D., E. F., and G. H., on a joint account, and that the survivors or survivor shall be competent to give valid discharges for the mortgage money: (Hallilay's Digest, 210, 217, 7th edit.; Will. Real Pro. 416, 9th edit.)

Q.—A first mortgagee having the legal estate takes a further charge. Does this give him priority over a second mortgagee?

A.—It does, if at the time of making the further advance, he had no notice of such intermediate second mortgage: (Will. Real Pro. 420, 9th edit.; Hallilay's Digest, 212, 7th edit.)

Q.—Out of what fund is a mortgage debt on the decease of the mortgagor, dying after the 31st December, 1854, primarily chargeable?(*a*)

A.—On the estate mortgaged, unless the mortgagor has by his will, deed, &c., signified a contrary intention. A will directing that all debts shall be paid out of the personal estate is not a contrary intention so as to include mortgage debts: (Hallilay's Digest, 214, 7th edit.; Will. Real Pro. 417–419, 9th edit.)

Q.—In 1860, A. seised in fee borrows moneys and covenants for repay-

(*a*) Twice.

ment, and mortgages land. He dies without giving directions as to its repayment, leaving ample personalty. Of course both the land and the personal estate are liable, but in what priority?

A.—The land is primarily liable as before stated.

Q.—If a mortgagor neglects to pay his money on the day fixed for payment, can he compel the mortgagee to receive the money on the following or any subsequent day?

A.—No; he must first give the mortgagee six calendar months notice of his intention to repay the money: (Will. Real Pro. 411, 9th edit.)

Q.—A mortgage for 1000*l.* and interest; what are the powers and remedies of the mortgagee to enforce payment of the principal and interest?

A.—He may proceed to foreclose the mortgage by bill in equity; he may sue on his bond or covenant, if one; he may bring ejectment; he may sell under his powers of sale contained in the mortgage deed, if any, and if none, then if the principal be in arrear for one year, or interest six months, or if the covenant to insure be broken, the 23 & 24 Vict. c. 145, gives him a power of sale, &c.: (Will. Real Pro. 409–411, 9th edit.; Hallilay's Digest, 216, 219, 7th edit.)

Q.—What is meant by foreclosing the mortgagor's equity of redemption?(*a*)

A.—Taking it out of the power of the mortgagor to get back his estate, even on payment of principal, interest, and costs; in fact, making the title of the mortgagee absolute in equity as well as at law: (Will. Real Pro. 409, 9th edit.; Hallilay's Digest, 360, 361, 7th edit.)

Q.—A mortgage to secure 1000*l.* limited at 5 per cent,, with a stipulation that in default of punctual payment the rate of interest shall be 6 per cent., state whether the provision is valid; and if not, how may the intention of the parties be effected?

A.—The provision is not valid, being considered in the light of a penalty or hardship on the mortgagee. But the intention of the parties may be effectuated by making the interest commence at 6 per cent. and recede to 5 on punctual payment: (Will. Real Pro. 415, 9th edit,; Hallilay's Digest, 360, 7th edit.)

Q.—State what are the usual and essential clauses of a mortgage in fee.

A.—Date, parties, recitals, *testatum*, parcels, and general words, *habendum*, provisoes for redemption and reconveyance, and that the mortgagor shall enjoy until default; covenants to pay principal and interest, absolute covenants for title, to repair and insure, and lastly powers of sale; but on this point see *supra:* (Hallilay's Digest, 217, 7th edit.)

TITLE.

Q.—Give the reason for requiring a sixty years' title.

A.—The duration of human life is considered the origin of this rule: (Will. Real Pro. 429, 9th edit.; Hallilay's Digest, 236, 7th edit.)

Q.—Give the covenants in a deed of conveyance of land from a vendor to a purchaser for valuable consideration.

A.—That the vendor is lawfully seised in fee, that he has good right to convey, for quiet enjoyment, free from incumbrances, and for further assurance. The two first-named covenants being to the same effect, the

(*a*) Twice.

first is usually omitted: (Will. Real Pro. 427, 9th edit.; Hallilay's Digest, 259, 7th edit.)

Q.—On the sale of a freehold estate which has been in the vendor's family for several generations, are any and what covenants for title inserted in the conveyance to the purchaser?

A.—Yes; to a purchaser for value, the covenants set out *supra*, which properly should extend to the acts of all intermediate owners up to the last purchaser for value, or other person who obtained proper covenants for title: (2 Smith's Comp. R. & P. Pro. 802, 4th edit.; Will. Real Pro. 427, 9th edit.; Hallilay's Digest, 260, 7th edit.)

Q.—What is the proper limit of responsibility to be expressed in covenants for title on a sale and mortgage respectively?(*a*)

A.—On a sale, the vendor usually only gives qualified covenants for title, restricted to his own acts and those claiming under him; but if he took the lands by will or descent, then he must covenant also for the acts of his ancestor, as stated *supra*. A mortgagor gives absolute covenants for title, extending to the acts of all the world: (Will. Real Pro. 427, 9th edit.; Hallilay's Digest, 210, 260, 7th edit.)

Q.—Is a sixty years' title sufficient in all cases, or does it ever, and if so when, become necessary to go further back?

A.—In the case of an advowson it is necessary to carry back the title 100 years: (Will. Real Pro. 428, 9th edit.; Hallilay's Digest, 236, 237, 7th edit.

Q.—What is the proper length of title to an advowson, and why is it longer than in other cases?

A.—The title to an advowson should be carried back 100 years. The reason is that by the 3 & 4 Will. 4, c. 27, no action shall be brought after the lapse of 100 years from the time at which the clerk obtained possession adversely to the right of the claimant: (Will. Real Pro. 307, 428, 9th edit.; Hallilay's Digest, 179, 7th edit.)

Q.—A. is possessed of a leasehold estate which he agrees to sell to B., without any special conditions as to title. What title has B. a right to require?

A.—If the lease be not sixty years old, he is entitled to require an abstract of so much of the title of the lessor prior to it, as with the title to the term since its commencement, will make up sixty years. If the lease be more than sixty years old, the lease itself must still be produced, though assignments more than sixty years old need not be produced: (Will. Real Pro. 429, 9th edit.; Hallilay's Digest, 237, 7th edit.)

Q.—After what length of time will a legacy charged on lands be presumed to have been paid, and what acts will rebut the presumption?

A.—After the expiration of twenty years from the time a present right to receive the same first accrued to the person capable of giving a discharge for the legacy, unless in the meantime this is rebutted by a written acknowledgment thereof having been given, or interest thereon paid: (3 & 4 Will. 4, c. 27, s. 40; Will. Real Pro. 434, 9th edit.; Hallilay's Digest, 326, 7th edit.)

Q.—What title deeds is a purchaser entitled to receive on completion of the purchase, and what is he not entitled to receive?

A.—He is entitled to receive all the title deeds in the hands of the vendor which relate *exclusively* to the property sold, but not further: (Will. Real Pro. 434, 437, 9th edit.; Hallilay's Digest, 244, 7th edit.)

(*a*) Twice.

Q.—Why on a mortgage is the possession of the deeds important?

A.—It is of the utmost importance that the mortgagee obtain possession of the deeds, otherwise the mortgagor might mortgage, or even sell the property to different persons without much risk of discovery. In case of a second mortgagee obtaining possession of the deeds, without notice of the prior charge, the first mortgagee may be postponed to the second mortgagee: (Will. Real Pro. 435, 9th edit.; Hallilay's Digest, 363, 7th edit.)

Q.—Does a covenant to produce deeds run with the land?

A.—It runs with the land in favour of a purchaser clothed with the legal estate, and it would seem to run as against every legal owner of the land, in respect of which the deeds have been retained in favour of the vendor: (Will. Real Pro. 437, 9th edit.; Hallilay's Digest, 243, 7th edit.)

Q.—In what cases must memorials of deeds and wills be registered?

A.—When the lands conveyed or devised are situate in Middlesex, Yorkshire, Kingston-upon-Hull, or the Bedford Level: (Will. Real Pro. 186, 438, 9th edit.; Hallilay's Digest, 263, 7th edit.)

Q.—Do deeds relating to land in any particular counties require to be registered?

A.—Yes: (see *supra.*)

III. EQUITY.

[NOTE.—*The text book formerly used by the Examiners in this branch was "Haynes' Outlines of Equity;" at present, it is "Smith's Manual of Equity Jurisprudence." 9th or 10th edition.*(a)

OF THE NATURE AND EXTENT OF EQUITY JURISDICTION.

Q.—As far as you are able, give a technical definition of "Equity" as opposed to its popular meaning. Is it synonymous with natural justice? (*b*)

A.—Equity may be defined to be a portion of justice not embodied in Acts of Parliament, or in the rules of the common law, yet modified with a due regard thereto, and administered by courts of equity because no proper relief could be obtained at law. It is not synonymous with natural justice, as many matters of natural justice are left to be disposed of *in foro conscientiæ*, such as duties of charity, gratitude, &c.: (Smith's Man. Eq. 1–9, 10th edit.; Hallilay's Digest, 310, 7th edit.)

Q.—Mention some of the principal heads of the Courts Equitable Jurisdiction.

A.—They are accident, mistake, fraud, legacies, donations *mortis causâ*, trusts, specific performance, account, administration, mortgages, apportionment and contribution, partnership, election, satisfaction, partition, injunction, *ne exeat regno*, infants, lunatics, married women, discovery, &c., &c: (Smith's Man. Eq.; Hallilay's Digest, 312, 7th edit.)

Q.—Courts of equity have jurisdiction in cases of (*inter alia*) partition, dower, trusts, and account; in which of these is their jurisdiction exclusive, and in which is it concurrent?

A.—In partition and trusts it is exclusive; over dower and account it is concurrent, although practically it may be said to be exclusive in account also: (Hallilay's Digest, 312, 7th edit.; Haynes' Tab. Anal. Eq.; Smith's Man. Eq. 6, 7, 258, 384, 10th edit.)

Q.—What are the ordinary instances in which a court of equity exercises its jurisdiction concurrently with courts of law?

A.—It exercises a concurrent jurisdiction with courts of law in cases where the latter did not originally afford relief, or complete relief, but have since given such adequate relief, as in cases of enforcing the delivery up of specific chattels; granting injunctions; in matters of partnership, fraud, &c., &c.: (Haynes' Tab. Anal. Eq.; Smith's Man. Eq. 7, 8, 10th edit.; Hallilay's Digest, 313, 7th edit.)

Q.—When does equity exercise an auxiliary jurisdiction with courts of law?

A.—In cases of discovery; perpetuating testimony; and examinations *de bene esse:* (Haynes, *ubi supra*; Hallilay's Digest, 313, 7th edit.; Smith's Man. Eq. 466, 8th edit.)

(*a*) In the order of arrangement we have followed that of Mr. Smith in his Manual rather than that of Mr. Haynes.

(*b*) Twice.

GENERAL MAXIMS OF EQUITY.

Q.—State some of the general maxims of equity jurisprudence, and give an instance of the application of each.(*a*)

A.—"Where there is equal equity the law must prevail." Thus, if a trustee sell to a *bonâ fide* purchaser for value, without notice of the trust, and passes to him the legal estate, the legal title of the purchaser prevails over the equitable one of the *cestui que trust.*

"Equality is equity." Therefore equity leans against a joint tenancy on account of the *jus accrescendi* attendant, and the equality being one of chance merely.

"He who comes into equity must come with clean hands." Thus, if a person seeks to set aside an instrument on account of fraud, and himself has been guilty of wilful participation in the fraud, he will obtain no relief unless the fraud be against public policy: (Smith's Man. 10–32, 10th edit.; Hallilay's Digest, 314–316, 7th edit.)

Further maxims and illustrations are set out in the following answers.

Q.—It is a maxim that "equity follows the law;" is this to be taken in an absolute or restricted sense?

A.—In a restricted sense; the maxim means that equity is governed by legislative enactments and the rules of law in regard to legal estates and rights; and that it is regulated by the analogy thereto in regard to equitable estates and rights, when any analogy plainly subsists; *unless* peculiar circumstances render it necessary to deviate from this rule. Thus equity follows the law in regard to primogeniture; but if two persons advance money on a joint purchase in *un*equal shares, at law they are joint tenants; in equity, however, they are tenants in common: (Smith's Man. Eq. 13, 16, 22, 10th edit.; Haynes' Eq. 23; Hallilay's Digest, 314, 7th edit.)

Q.—Explain the meaning of the maxim "*Vigilantibus non dormientibus æquitas subvenit?*"

A.—The meaning of this maxim is, that equity discountenance laches, and has always refused to interfere where there has been gross laches in prosecuting rights, or long and unreasonable acquiescence in the assertion of adverse rights: (Smith's Man. Eq. 19, 10th edit.; Hallilay's Digest, 315, 7th edit.)

Q.—Will a court of equity interpose when one party has no more equity than another, or will it leave the parties to their remedy at law?

A.—The court will not interfere, but leave the parties to their remedy at law, if any, for it is a maxim of equity that "where the equities are equal the law prevails": (Smith's Man. Eq. 20, 10th edit.; Hallilay's Digest, 315, 7th edit.)

Q.—If two persons jointly purchase an estate, advancing the purchase-money in unequal proportions, and one dies, does equity consider the survivor as absolutely entitled to the whole estate, or how otherwise? And quote the maxim applicable to this case.

A.—The survivor is considered in equity as a trustee for the representative of the deceased, to the extent of a share proportionate to the amount of his share of the purchase-money—the maxim being equality is equity: (Smith's Man. Eq. 21, 22, 10th edit.; Hallilay's Digest, 315, 7th edit.)

Q.—What is meant by the equitable doctrine of constructive conversion? (*b*)

(*a*) Twice. (*b*) Thrice.

A.—It is that money directed to be laid out in the purchase of land, or land directed to be sold and turned into money, is generally regarded as that species of property into which it is directed to be converted; for it is a maxim that equity looks upon that as done which ought to be done: (Smith's Man. Eq. 24, 10th edit.; Hallilay's Digest, 316, 7th edit.)

Q.—In what cases, and as a consequence of what general maxim of equity, will the court regard land as money and money as land?

A.—In the above cases and on the above maxim.

Q.—If property in controversy be situate beyond the jurisdiction of the court, will the court under any and what circumstances, and by what means, afford relief?

Q.—Yes; it is a rule that although the property in controversy be out of, yet if the parties are or come within, the jurisdiction, the court will, so far as it can, give relief by proceeding against *the parties*, and not directly against the property: (Smith's Man. 29, 10th edit.; Hallilay's Digest, 404, 7th edit.)

Q.—By what law is the right to land or personal property governed? And state what governs the remedy on contracts, and by what law they are construed.

A.—The right to land is governed by the law of the country where it is situate, but the right to personal property follows the domicile. The remedy upon contracts must be that which is given by the law where the parties reside, but the contracts are generally construed according to the law of the place where they were made: (Smith's Man. Eq. 30, 10th edit.; Hallilay's Digest, 316, 7th edit.)

DIVISION OF EQUITY.

Q.—Under what general heads does Mr. Smith in his Manual treat the subject of equity?

A.—1. Remedial Equity, specifically so called. 2. Executive Equity. 3. Adjustive Equity. 4. Protective Equity, irrespective of disability. 5. Protective Equity, in favour of persons under disability: (Smith's Man. Eq. 33, 10th edit.)

OF ACCIDENT.

Q.—Define accident. Give examples in which courts of equity will give relief, and in which no relief will be granted.(*a*)

A.—Accident, as remedial in equity, is an unforeseen and injurious occurrence, not attributable to mistake, neglect, or misconduct. For example where relief will be afforded in equity see next answer. No relief will be granted where the accident arose from the gross neglect of the party seeking relief, or his agents: (Smith's Man. Eq. 36, 10th edit.; Hallilay's Digest, 316, 7th edit.)

Q.—In what cases falling under the head of accident is relief afforded in equity?

A.—In such unforeseen and injurious occurrences as are not attributable to mistake, neglect, or misconduct; as if stock, directed by will to be set apart to answer an annuity, is reduced by Act of Parliament, equity will decree the deficiency to be made up against the residuary legatee: (Smith's Man. Eq. 36, 10th edit.; Hallilay's Digest, 316, 7th edit.)

Q.—What are the two classes of cases properly referable to the head "Accident"?

(*a*) Four.

A.—They are—(1) in cases of lost instruments, and (2) the defective execution of powers: (Haynes' Eq. 131, 132; Smith's Man. Eq. 41, 42, 10th edit.; Hallilay's Digest, 316, 7th edit.)

Q.—If an estate to be sold for a certain sum of money, and an annuity for the life of the vendor, and the vendor dies before the receipt of any part of the annuity, will equity grant his representatives any relief?

A.—No; for the vendor's death is not an "unforeseen," &c., occurrence. It might and ought to have been provided against by the vendor at the time of the contract: (Smith's Man. Eq. 37, 10th edit.; Hallilay's Digest, 317, 7th edit.)

Q.—Have courts of equity jurisdiction to give relief in the case of the *destruction* of a bill of exchange? State the distinction in this respect between the destruction and loss of a bill.

A.—Equity has no jurisdiction to grant relief on account of the *destruction* of a bill of exchange, because there was always a complete remedy at law in such a case. In the case of a *lost* bill, no relief will be granted in equity, unless there is an offer of indemnity in the bill, constituting a ground of jurisdiction: (Smith's Man. Eq. 41, 42, 10th edit.; Hallilay's Digest, 317, 7th edit.)

Q.—Will a court of equity grant relief in the case of the non-execution of a power which is coupled with a trust?

A.—It will; because the donee was under an equitable obligation to exercise it: (Smith's Man. Eq. 43, 10th edit.; Hallilay's Digest, 318, 7th edit.)

OF MISTAKE.

Q.—Define mistake.(*a*)

A.—Mistake, as remediable in equity, is an act which would not have been done, or an omission which would not have occurred but from ignorance, forgetfulness, inadvertence, mental incompetence, surprise, misplaced confidence, or imposition: (Smith's Man. Eq. 45, 10th edit.)

Q.—In cases of mistake, upon what point do equity, common law, and Roman law agree?

A.—That while mistake as to law affords no ground of relief, mistake of fact does: (Haynes' Eq. 132.)

Q.—State what was decided in the case of *Lansdown* v. *Lansdown*, as to "mistake," as far as you recollect.

A.—It was decided that the bond and conveyance for carrying out the agreement between the son of a younger brother and his uncle, given under a mistake of law, that the uncle and not his nephew was heir, should be set aside, Lord King being reported to have said that "ignorance of law could not be pleaded as excuse of crimes, but this did not hold in civil cases." This, however, is clearly not now law: (Haynes' Eq. 135.

Q.—Does mistake as to law afford ground of relief in equity?(*b*)

A.—Not as a rule, the maxim being *Ignorantia legis non excusat;* yet if the mistake is one of title arising from ignorance of a principle of law of such constant occurrence as to be understood by the community at large, the court presumes that the party making such mistake has been imposed upon in some way and grants relief: (Smith's Man. Eq. 45, 46, 10th edit.; Haynes' Eq. 132, *et seq.*; Hallilay's Digest, 317, 7th edit.)

Q.—Does mistake as to facts afford ground of relief in equity?(*b*)

(*a*) Thrice. (*b*) Twice.

A.—Yes; but the mistake must be unilateral, the fact material, not doubtful, and one that could not be ascertained by using ordinary diligence, and of which the other party was under a legal obligation to inform the mistaken person: (see references *supra.*)

Q.—When will a court of equity relieve against the defective execution of a power; and on what principles?(*a*)

A.—In the absence of countervailing equity, relief will be granted where the defect is not of the very essence of the power, and the defective execution was occasioned by accident, and is in favour of a charity, purchasers, creditors, a wife, child, or intended husband: (Smith's Man. 42, 10th edit.; Hallilay's Digest, 318, 7th edit.)

OF ACTUAL FRAUD.

Q.—Define what actual fraud is, and mention cases in which equity will give relief, and state instances in which no relief will be granted.

A.—Actual fraud is something said, done, or omitted by a person with a design of perpetrating what he must have known to be a positive fraud. Equity will set aside a deed or contract when entered into with infants, lunatics, persons excessively drunk or under extreme terror, &c. Also contracts in restraint of marriage or trade generally, those involving champerty, or maintenance, &c. But no relief will be granted by equity to set aside a will obtained by fraud, or to establish a will suppressed by fraud, because the proper remedy is exclusively in the Probate Court. And where proper relief could be had at law, as in cases of fraud in the sale of chattels personal, no relief will be given at equity: (Smith's Man. Eq. 55, 10th edit.; Hallilay's Digest, 319, 320, 7th edit.)

Q.—What different kinds of fraud are relieved against in equity, and distinguish between them.(*b*)

A.—The kinds of fraud relieved against in equity are two, viz., actual and constructive. Actual fraud is defined *suprà*, constructive fraud *infrà*. Actual fraud is subdivided into (1) those so named from the conduct of the guilty parties irrespective of any peculiarity in the condition of the injured parties (including misrepresentation, concealment, &c.); and (2) those so named chiefly from a consideration of the peculiar condition of the parties upon whom they are practised: (Smith's Man. Eq. tit. 1, c. 3 and 4, 10th edit.)

Q.—Can a court of equity interfere with respect to frauds in wills?

A.—Not if the fraud goes to the whole will; for then the proper remedy is exclusively in the Court of Probate. But it seems a court of equity has jurisdiction if the fraud only goes to some particular *part* of the will, &c.: (Smith's Man. Eq. 55, 10th edit.; Hallilay's Digest, 320, 7th edit.)

Q.—What is misrepresentation, and when is it a ground of relief in equity?

A.—Misrepresentation is a representation, either by word or deed, and either wilfully or not, made by a person to another with a reasonable ground for supposing that he or a third person would act upon such representation, and he or such third person does act upon it and is misled thereby. But in order to obtain relief in equity, the misrepresentation must be made in the transaction which creates the contract, and must be material, not trifling, and injury must have arisen from it. The injured party

(*a*) Twice. (*b*) Four.

must also have exercised reasonable care, and if this party had not acted on the misrepresentation no relief will be granted: (Smith's Man. Eq. 57–59, 10th edit.)

Q.—If a vendor is ignorant of circumstances known to the purchaser which materially increase the value of his property, will equity set aside the contract at the suit of the vendor, and will it decree specific performance at the suit of the purchaser?

A.—Equity will not set aside the contract at the suit of the vendor, because it was his business to know and sufficiently estimate the worth of his own property; nor will equity enforce such a contract at the suit of the purchaser, where he hurries the vendor into the agreement without giving him an opportunity of inquiry or advice: (Smith's Man. Eq. 60, 234, 10th edit.; Hallilay's Digest, 320, 7th edit.)

Q.—Will equity set aside a deed or contract for inadequacy of price?

A.—Not as a general rule; but if the price is so inadequate as to shock the conscience, or if there be inadequacy and other suspicious circumstances, as if the vendor was not allowed sufficient time for deliberation, then equity will set the sale aside: (Smith's Man. Eq. 62, 10th edit.; Hallilay's Digest, 321, 7th edit.)

Q.—Where gifts or legacies are bestowed on persons on condition that they shall marry with the consent of parent, guardians, or other confidential persons, and such consent be refused from fraudulent, corrupt, or unconscientious motives, will a Court of Equity interfere, and, if so, with what object?

A.—Equity will interfere in such a case, as it will not suffer the manifest object of the condition to be defeated by the fraudulent, corrupt, or unconscientious refusal of the parties whose consent is required to the marriage: (Smith's Man. Eq. 65, 10th edit.)

OF CONSTRUCTIVE FRAUD.

Q.—Define constructive frauds, and state between what parties, standing in a fiduciary relation, are contracts liable to be set aside.(*a*)

A.—Constructive frauds are acts or omissions which operate as virtual frauds on individuals, or injure the public interests, and are not referable to accident or mistake, and yet may have been done without any evil design. Contracts and gifts between trustee and *cestui que* trust, parent and child, guardian and ward, doctor and patient, solicitor and client, &c., are all liable to be set aside: (Smith's Man. Eq. 69, *et seq.*, 10th edit.)

Q.—State what contracts and conditions in restraint of trade are good and what are bad.

A.—Those in *general* restraint of trade are void, as tending to discourage industry, just competition and enterprise; but *partial* restraints are good: Smith's Man. Eq. 71, 10th edit.; Hallilay's Digest, 324, 7th edit.)

Q.—State some cases in which Equity will set aside contracts on the ground of undue influence.

A.—Equity will set aside contracts made between parent or person standing *in loco parentis*, or relative having influence, and child, unless entered into with scrupulously good faith, and are reasonable; guardian and ward, by quasi guardians or confidential advisers, or ministers of religion; solicitor and client; doctor and patient; secret contracts of agent with principal; trustee and *cestui que trust;* and the like:

(*a*) Twice. (*b*) Thrice.

(Smith's Man. Eq. 74, *et seq.* 10th edit.; Hallilay's Digest, 319, 7th edit.)

Q.—When will a sale or purchase between solicitor and client be deemed good, and when void?

A.—For such a sale or purchase to be good, the relation between them (as solicitor and client) must be dissolved, and the onus of proving the fairness and propriety of the transaction will be thrown on the former, or he must show that the client had sufficient advice and assistance to relieve him from the pressure of such a relationship, and that no advantage has been taken by the solicitor of his professional position, otherwise the contract will be void: (Smith's Man. Eq. 76, 10th edit.; Hallilay's Digest, 401, 7th edit.)

Q.—State the circumstances under which a gift, sale, or lease made by a person just after attaining majority is good?

A.—As to contracts with strangers, the contract will come under the same rules as those enumerated *ante*, respecting persons of full age. But if it be made with a relative, it will be set aside, unless the grantor or lessor made it deliberately and intentionally after having the fullest information on the subject, and independent and disinterested advice: (Smith's Man. Eq. 88, 10th edit.)

Q.—When is a conveyance deemed voluntary and fraudulent against creditors and purchasers?

A.—A conveyance made without valuable consideration is deemed fraudulent against creditors to whom the grantor was indebted at the time; and also against *bonâ fide* purchasers for value, even with notice of the voluntary conveyance: (Smith's Man. Eq. 93, 94, 100–102, 10th edit.; Hallilay's Digest, 321, 323, 7th edit.)

Q.—When is a settlement said to be a fraud on a husband's marital rights?

A.—When a woman, in contemplation of marriage, without the privity of her intended husband, makes a settlement to her separate use, or in favour of persons for whom she is under no moral obligation to provide, it is said to be a fraud on the husband's marital rights, and will be set aside in equity: (Smith's Man. Eq. 93, 10th edit.; Hallilay's Digest, 323, 7th edit).

Q.—When will priority of registration in a register county give priority of right between purchasers or mortgagees?

A.—Where a subsequent purchaser or mortgagee registers first and without notice of the prior conveyance, the subsequent mortgagee or purchaser would prevail over the first vendee or mortgagee: (Smith's Man. Eq. 97, 10th edit.; Hallilay's Digest, 264, 7th edit.)

OF LEGACIES AND PORTIONS.

Q.—What course will courts of equity take to secure the ultimate payment of legacies which are not payable until a future day?

A.—Equity will compel the executor to give security for the payment of such legacies, or (which is the modern and most appropriate practice) will order the fund to be paid into court, even if there is not any actual waste, or danger of waste: (Smith's Man. Eq. 110, 10th edit.)

Q.—Where a specific legacy is given to one for life, and after his death to another, under what circumstances can the legatee in remainder obtain a decree for security from the tenant for life for the delivery over of the legacy, and in the absence of those circumstances, to what is the remainderman entitled, and for what purpose?

A.—The legatee in remainder can obtain a decree for security from the tenant for life if there is some allegation and proof of waste, otherwise he is only entitled to have an inventory of the property which is bequeathed to him so that he may be enabled to identify it, and enforce a due delivery of it when his right to present possession accrues: (Smith's Man. Eq. 110, 10th edition.)

Q.—From what time does the interest on a legacy given by a parent to a child commence?

A.—As the legacy is regarded as a provision for the child, interest runs from the death of the parent: (Smith's Man. 111, 112, 10th edit.; Hallilay's Digest, 325, 7th edit.)

Q.—Give an instance in which a legacy not payable until a future day, carries interest immediately.(*a*)

A.—Whenever a legacy is given by a father to his child, as a provision for such child, though payable at a future day, the child has a right to the interest of the money from the testator's death: (Smith's Man. Eq. 112, 10th edit.; Hallilay's Digest, 325, 7th edit.)

OF DONATIONS MORTIS CAUSA.

Q.—Define a *donatio mortis causâ*, and state in what particulars it differs from, and in what it resembles, a legacy. How can it be revoked?(*b*)

A.—A *donatio mortis causâ* is a gift of personal property made by one who is in peril of death, evidenced by a manual delivery of the property itself, or the means of obtaining possession of it, and conditioned to take effect in the event of his not recovering from his existing disorder, and not revoking the gift before his death.

It differs from a legacy thus—(1) it takes effect *sub modo* from the delivery in the donor's lifetime, and cannot, therefore, be proved as a testamentary act in the Probate Court; (2) it requires no assent of the executor or administrator to perfect the donee's title. It differs from a gift *inter vivos*, and resembles a legacy in these particulars—(1) it is revocable during the donor's lifetime; (2) it may be made to the wife of the donor; (3) it is liable for the donor's debts on a deficiency of assets; As it is but a conditional gift, it may be revoked by a change of intention by the donor, or by his recovery from such illness: (Smith's Man. 115, 10th edit.; Hallilay's Digest, 326, 7th edit.)

OF EXPRESS PRIVATE TRUSTS.

Q.—Define a trust.(*a*)

A.—A trust, when used in the sense of an interest, is the beneficial interest in or ownership of real or personal property, unattended with the possessory and legal ownership thereof: (Smith's Man. Eq. 118, 10th edit.; Haynes' Eq. 96, *et seq.*; Hallilay's Digest, 327, 7th edit.)

Q.—State shortly the difference between an express and an implied trust, and define a constructive trust.

A.—An express trust is one which is clearly expressed by the author thereof, or may fairly be collected from a written document, while an implied trust is one founded on an unexpressed but presumable intention. A constructive trust as distinguished from both the former is one raised

(*a*) Twice. (*b*) Thrice.

by construction of equity in order to satisfy the demands of justice without reference to any presumable intention of the parties: (Smith's Man. Eq. 119, 152, 174, 10th edit.; Hallilay's Digest, 328, 330, 7th edit.)

Q.—Define a declaration of trust, and what declarations of trusts must be in writing.

A.—A declaration of trust is an acknowledgment that the beneficial interest in the property held, belongs to some other person than the person holding the same. Declarations of trust of freehold, copyhold, or leasehold lands, are required by the Statute of Frauds to be in writing signed by the party declaring the same. But declarations of trust of money even though secured on real estate, or of chattels personal, need not be so evidenced: (Smith's Man. Eq. 119, 10th edit.)

Q.—When will expressions of recommendation, confidence or hope, in a will create a trust?

A.—In a will, such expressions will create a trust if the object and the property which is to form the subject of the supposed trusts are certain and definite, and if, regard being had to the whole context and circumstances of the will, the subject matter, the previous conduct of the testator, the situation of the parties and the probable intent, the expressions appear to have been intended to be imperative: (Smith's Man. Eq. 122, 10th edit.)

Q.—How do trusts arise, and how are they enforced?

A.—A trust is now raised by limiting a use upon a use. For the Statute of Uses can only turn the first use into a legal estate, and any further uses declared remain trusts, and are enforced by courts of equity only: (Smith's Man. Eq. 121, 10th edit.; Haynes' Eq. 106, &c.)

Q.—What is the distinction between trusts executed and executory? and how are they construed by a Court of Equity? Give examples of a trust executed, and a trust executory?(*a*)

A.—Trusts executed are those formally and finally declared by the instrument creating them. Trusts executory are those raised by a mere *direction* to make a settlement upon certain trusts. Thus, marriage *articles* are an executory trust, while the *settlement* made in pursuance thereof is the trust executed. Trusts executory are not construed so strictly as the former, but more according to the presumable intention of the party creating, if construing them strictly would render the settlor's directions to settle nugatory: (Smith's Man. Eq. 127, 10th edit.; Hallilay's Digest, 327, 7th edit.)

Q.—What trusts will the court enforce?

A.—Trusts that are *executed*, or are raised by will, but not *executory* trusts, unless made for valuable consideration: (Smith's Man. Eq. 133, 10th edit.; Hallilay's Digest, 327, 7th edit.)

Q.—What trusts will equity enforce, and what trusts will it not enforce?

A.—Equity will enforce a trust where it is executed, or where it is raised by a will, although it be a voluntary trust, but it will not enforce a mere voluntary executory trust raised by a covenant or agreement, unless for valuable consideration: (Smith's Man. Eq. 133, 10th edit.; Hallilay's Digest, 327, 7th edit.)

OF EXPRESS CHARITABLE TRUSTS.

Q.—If the objects of a charitable gift are contrary to law, or the objects fail, what directions will the court give?

(*a*) Thrice.

A.—The court will order that the fund be devoted to some other charitable purpose if the nature of the gift or the concurrence of other charitable gifts in the same instrument indicates that, although the specified object was the favourite, yet had the giver thought such a design could not be accomplished, he would have chosen some other object. Where no such indication appears, the next of kin will take. If the objects fail the court will remodel the charity: (Smith's Man. Eq. 148, 10th edit.)

Q.—Where money is bequeathed to charitable purposes abroad, in what cases will the Court of Chancery secure the fund, and cause the charity to be administered under its direction, and in what cases will the court not do so?

A.—In such a case, the Court of Chancery will secure the fund, and cause the charity to be administered under its own direction provided the charitable purposes are to be executed by persons residing within the jurisdiction of the court. But this will not be done if the objects of the charity are against law or public policy, unless the principle of such policy is of a national or conventional, rather than of a universal and moral, or religious character: (Smith's Man. Eq. 150, 10th edit.)

OF IMPLIED TRUSTS.

Q.—What is an implied trust?

A.—One founded on an unexpressed but presumable intention: (Smith's Man. Eq. 152, 10th edit.; Hallilay's Digest, 328, 7th edit.)

Q.—When property is given upon trusts which fail, either by deaths or illegality, or otherwise, to whom does the resulting trust of such property belong?

A.—To the person creating the trust, or if he be dead, to his representatives, real or personal, according to whether the property is real or personal: (Smith's Man. Eq. 153, 10th edit.; Hallilay's Digest, 328, 329, 7th edit.)

Q.—Give an instance of a trust raised by implication.

A.—If A. purchase a freehold estate and have it conveyed into the name of B., a *stranger*, an implied trust of the estate arises in B. for A.'s benefit, which A. may enforce by will in equity: (Smith's Man. Eq. 167, 168, 10th edit.; Hallilay's Digest, 328, 329, 7th edit.; Haynes' Eq. 96, *et seq.*)

Q.—A. purchases an estate, and takes a conveyance in the name of C., his son. Is there a resulting trust to A.?

A.—Not if the child is unprovided for; because it is presumed that the purchase was intended as a provision for the child. Circumstances may, however, rebut this presumption: (Smith's Man. Eq. 168, 10th edit.; Hallilay's Digest, 330, 7th edit.)

Q.—Define a constructive as distinguished from an express or implied trust, and give an example.(*a*)

A.—It is one raised by equity to meet the demands of justice, without reference to any intention of the parties. As where a joint owner, acting *bonâ fide*, permanently benefits the estate by repairs or improvements, equity raises a constructive trust in his favour to the extent of the improvements: (Smith's Man. Eq. 174, 10th edit.; Hallilay's Digest, 330, 7th edit.)

(*a*) Twice.

CONSTRUCTIVE TRUSTS.

Q.—If executors by mistake pay legatees before all the testator's debts are paid, in what position do the legatees stand towards the creditors? (*a*)

A.—The legatees are treated as trustees for the creditors for the purpose of paying the debts, because they are not entitled to anything except the surplus of the assets after all the debts are paid: (Smith's Man. Eq. 175, 10th edit.)

Q.—If a vendor conveys real estate to a purchaser and in the conveyance acknowledges the payment of the purchase money, and also signs a receipt indorsed upon the conveyance for it, but does not in fact receive payment, what security has he, and against whom?

A.—The vendor has in equity, but not at law, a lien on the land so sold for the purchase money. Such a lien continues notwithstanding the devolution or transfer of the estate, and is therefore good as against all persons except when it is extinguished by the countervailing equity of a *bonâ fide* purchaser for valuable consideration without notice, when clothed with the legal title: (Smith's Man. Eq. 177, 10th edit.; Hallilay's Digest, 330, 7th edit.)

OF TRUSTEES AND PERSONS STANDING IN A FIDUCIARY RELATION.

Q.—Are trustees, as such, entitled to any, and what, allowance for expenses or loss of time, or either of them?

A.—They are entitled to be reimbursed their legitimate expenses; but are not allowed, without express stipulation, any remuneration for services rendered: (Smith's Man. Eq. 187, 188, 10th edit,; Hallilay's Digest, 333, 7th edit.)

Q.—State the principles followed by the Court of Chancery in reference to profit and loss made by trustees in administering or dealing with trust funds.

A.—The profit will belong to the *cestui que trust*, for it is a constructive fraud upon the latter to employ the property contrary to the trust. But if any loss should arise in consequence of the violation of the trust, the trustee will be liable to make good the deficiency; he cannot set off the profit against the loss: (Smith's Man. Eq. 190, &c., 10th edit.; Hallilay's Digest, 333, 7th edit.)

Q.—Mention some instances in which executors or trustees would be held liable for money deposited with bankers who fail.

A.—Where an executor or trustee places his money in the hands of a banker by way of investment, notwithstanding an indemnity clause against loss by a banker of money deposited for safe custody, or where the sum is an unreasonable one for the executor to keep in the bank, or if he mixes it with his own money at the bankers, he will be held liable for the amount on the failure of the banker: (Smith's Man. Eq. 194, 199, 10th edit.)

Q.—If a trustee is bound by the terms of his trust to invest in the public funds, but instead of doing so retains the money in his hands, what is the claim which the *cestui que trust* has against him in equity? (*a*)

A.—The *cestui que trust* may, at his option, either claim to have the money, and interest at 4 per cent., or the stock which might have been purchased therewith at the time when the investment ought to have been

(*a*) Twice.

made, and the dividends: (Smith's Man. 197, 10th edit.; Hallilay's Digest, 337, 7th edit.)

Q.—What is the rule in equity as to the purchase by a trustee of the trust estate? (*a*)

A.—A trustee cannot purchase of himself, and he is not allowed to become a purchaser of the trust property even at a sale by auction; and the *cestui que trust* may set aside the sale without showing fraud: (Smith's Man. Eq. 80, 201, 10th edit.; Hallilay's Digest, 337, 7th edit.)

Q.—Can one of two executors settle an account with a person who is accountable to the estate?

A.—Yes; each executor has a right to receive the debts due to the estate and all other assets, and is competent to give a valid discharge by his own separate receipt. But it is otherwise with a co-trustee: (Smith's Man. Eq. 204, 10th edit.)

Q.—For what reason is a purchase from an executor of the personal property of a testator, though such property may, while in the hands of the executor, be affected by a trust, generally valid? and will such purchase in any, and what, case, be set aside?

A.—It is generally valid if for money advanced to the executor at the time; because the sale or pledge is *primâ facie* consistent with the duty of the executor. But if the sale or pledge of the assets was in satisfaction of the buyer's private debt, or without any consideration, the transaction would be set aside: (Smith's Man. 205, 10th edit.)

Q.—At the termination of an executorship or trusteeship, is the executor or trustee entitled to have a release under seal from the *cestui que trust*?

A.—No; the *cestui que trust* cannot be *compelled* to give the executor or trustee a release under seal, although it is usual to do so. But he ought to give an acknowledgment equivalent to one, when the trusteeship is ended: (Smith's Man. Eq. 217, 10th edit.)

OF THE SPECIFIC PERFORMANCE OF AGREEMENTS, ETC.

Q.—When the contract for the sale and purchase of land has been broken, what is the difference between the remedy of either party at law and in equity? (*a*)

A.—The difference is this: equity can compel the specific performance of the contract, or award damages, or give both; while a court of law can only award damages for the breach of the contract, unless indeed the contract comprises a public duty: (Smith's Man. Eq. 219, *et seq.*, 10th edit.; Haynes' Eq. 141, *et seq.*; Hallilay's Digest, 339, 7th edit.)

Q.—When will equity refuse to enforce specific performance of contracts?

A.—(1) When damages at law would amount to a complete compensation. (2) Where the contract has become incapable of being substantially performed by the plaintiff. (3) If the plaintiff has been guilty of any negligence affecting the essence of the contract. (4) If the application is by a vendor having a defective title not remediable before decree. (5) If there is a substantial misrepresentation or misdescription of the property unknown to the purchaser. (6) In cases of doubtful title. (7) If the character of the property has been so altered that the terms of the contract are not applicable to it. (8) When the defendant

(*a*) Twice.

has by fraud or mistake bought a different thing to what he intended, or where there is a great mistake in the price. (9) If the estate bought be of a different tenure. (10) If material terms have been omitted in a contract, or there has been a variation of it by parol. (11) When the contract is founded on imposition, undue influence, or the like. (12) Where the defendant would be immediately involved in litigation. (13) Where it would be morally wrong or inequitable to enforce the contract: (Smith's Man. Eq. 220, 231, *et seq.*, 10th edit.; Hallilay's Digest, 339, 7th edit.)

Q.—Will courts of equity decree specific performance of contracts in cases where damages at law would amount to a complete compensation for the breach of such contracts?

A.—No; see preceding answer.

Q.—State the essential requisites in contracts or agreements which are required in order to obtain specific performance in a court of equity.(*a*)

A.—The requisites are that the contract be in writing (with three exceptions) signed by the party to be charged; made between parties able and willing to contract; for a valuable consideration, which must not be illegal or immoral; the terms clear and definite; and a contract for the breach of which damages would not compensate: (Smith's Man. Eq. tit. 2, c. 8; Hallilay's Digest, 339, 7th edit.)

Q.—Mention any cases where equity will decree specific performance of a parol contract relating to land notwithstanding the 4th section of the Statute of Frauds.(*a*)

A.—Equity will do so in the following cases—(1) when the agreement is set out in the bill, admitted by the defendant's answer, and he does not set up the statute as a defence; (2) when the defendant prevented the contract from being reduced into writing by fraud; (3) when the contract has been partially performed: (Smith's Man. Eq. 248, 10th edit.; Hallilay's Digest, 339, 7th edit.)

Q.—What redress is there in equity against a party who has contracted to do a thing; and not done it; and in what cases will equity refuse to interfere?

A.—If the case comes under the class pointed out by the two preceding answers, equity may enforce specific performance of the contract; and may also by the 21 & 22 Vict. c. 27, award damages either in addition to, or in substitution for, specific performance. But before damages can be granted, the plaintiff must establish by proper evidence his right to specific performance: (Smith's Man. Eq. 248, 10th edit; Hallilay's Digest, 339 and note, 7th edit.)

Q.—Will equity decree specific performance of a contract to buy or sell stock or goods?(*b*)

A.—Not as a general rule, as damages obtained by an action at law would compensate either party for the breach of the contract by the other: (Smith's Man. Eq. 220, 10th edit.; Hallilay's Digest, 341, 344, 7th edit.)

Q.—Define champerty and maintenance respectively.

A.—Champerty is a bargain between a plaintiff or defendant in a cause and another person who has no interest in the subject matter in dispute, to divide the property sued for between them if they prevail at law, in consideration of another person carrying on the suit at his own expense. Maintenance is merely assisting either plaintiff or defendant with money

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(*a*) Five. (*b*) Twice.

to prosecute or defend a suit: (Smith's Man. 236, 10th edit.; Hallilay's Digest, 345, 7th edit.)

Q.—Can the assignee of a policy of insurance who has not given notice of his assignment, hold as against the trustee under a bankruptcy?

A.—No; for it is a rule that when an assignment is made, everything must be done towards the obtaining the *quasi* possession that the subject admits of, in order to prevent payment to the assignor, or the rights of a trustee in bankruptcy from attaching; and notice of such assignment to the insurance office is essential to complete the assignee's title: (Smith's Man. Eq. 244, 10th edit.)

OF ACCOUNT.

Q.—Into what divisions are accounts classed?

A.—Into open, stated, and settled accounts: (Smith's Man. Eq. 257, 10th edit.)

Q.—Define an "open account," and distinguish it from a "stated account."

A.—An "open account" is one of which the balance is not struck, or which is not accepted by both parties. It differs from a "stated account" inasmuch as the latter is accepted by both parties, either in express terms or by necessary implication: (Smith's Man. Eq. 257, 10th edit.)

Q.—Define the legal relation between a banker and his customer; and state whether a bill for an account will lie by the customer against the banker.

A.—It is not that of principal and agent, or of trustee and *cestui que* trust, but of debtor and creditor only; and a bill for an account will not lie by the customer against his banker: (Haynes' Eq. 241.)

Q.—Can a principal file a bill against his agent, or an agent against his principal?

A.—The principal may file a bill against his agent (Haynes' Eq. 242), unless the matter could be fairly tried at law (Smith's Man. Eq. 257, 10th edit.); but an agent cannot file a bill against his principal: (Haynes' Eq. 242; Hallilay's Digest, 346, 7th edit.)

Q.—State the rule of law as between debtor and creditor as to the appropriation of payments made by the former to the latter; and what appropriation does the law imply in the absence of any express act on the part of either debtor or creditor?(*a*).

A.—The debtor has the first right to appropriate the payments at the time of making them; and, if he does not do so, the creditor then has the right. If neither does so, the law implies an appropriation of the payments to the items of debt in order of their date: (Smith's Man. Eq. 260, 10th edit.; Hallilay's Digest, 22, 7th edit.)

ADMINISTRATION.

Q.—Describe the three kinds of administration suits.

A.—They are—(1) creditors' suits; (2) legatees' suits; (3) suits by parties interested in the residuary, real, and personal estate: (Haynes' Eq. 107.)

Q.—State the several proceedings which may be adopted by a creditor who finds it necessary to resort to a court of equity to enforce the payment of a debt due from his deceased debtor.

(*a*) Twice.

A.—The creditor may enforce payment of his debt either by filing a bill or taking out a summons for such purpose: (Smith's Man. Eq. 262, 10th edit.; Hallilay's Digest, 347, 7th edit.)

Q.—If after a decree to account has been made in a creditor's suit against an executor, other creditors take proceedings at law against the executor, what is the proper course of proceeding by the executor?

A.—The executor should at once apply to the Court of Equity by which the decree was made, for an injunction to restrain any of the creditors from taking any proceedings against him except under the direction of the court: (Smith's Man. Eq. 262, 10th edit.; Hallilay's Digest, 348, 7th edit.)

Q.—Explain the difference between legal and equitable assets.

A.—Legal assets comprise property which creditors can make available in a court of law for the payment of their debts, and which assets have devolved upon the executor or administrator by virtue of his office. Equitable assets are such as the creditors can only make available by the aid of a court of equity: (Smith's Man. 264, 10th edit.; Hallilay's Digest, 349, 7th edit.)

Q.—How are each administered amongst creditors?

A.—Legal assets, even in equity, are (subject to the 32 & 33 Vict. c. 46) administered according to their legal priorities; while equitable assets, with the exception of antecedent liens and charges *in rem*, are administered *pari passu*: (Smith's Man. Eq. 264, 10th edit.; Hallilay's Digest, 349, 7th edit.)

Q.—In what order of administration are assets now generally applied in payment of debts?

A.—1. The general personal estate. 2. Any estate particularly devised for the payment of debts. 3. Estates descended. 4. Estates devised to particular devisees, but charged with the payment of debts. 5. General legacies. 6. Residuary devises, and specific legacies and devises. 7. Property over which a testator has a general power, and appoints by will: (Smith's Man. Eq. 266, 10th edit.; Hallilay's Digest, 349, 7th edit.)

Q.—If a deceased's personal estate is not sufficient to pay his debts and legacies, what is the order of payment between each of those classes, and between general and residuary legacies?

A.—The debts must first be paid in full before the legatees receive anything; for it is presumed that the testator means to be just before he is generous. Specific legatees are also preferred to residuary legatees as the latter only take the residue after satisfying all the charges on the personal estate: (Smith's Man. Eq. 277, 10th edit.)

Q.—What is meant by marshalling assets? And for whose benefit will such marshalling be enforced?(*a*)

A.—It is so arranging (or *marshalling*) the various effects or funds of a deceased debtor, who has several creditors or claimants on his effects, that all shall be paid and satisfied, if this arrangement can be carried out without injustice to any creditor or claimant. This plan is adopted in favour of a creditor of an inferior rank, of legatees, portionists, the heir at law, or devisee: (Smith's Man. Eq. 280, 10th edit.; Hallilay's Digest, 350, 7th edit.)

OF MORTGAGES.

Q.—State some of the circumstances which have been considered by

(*a*) Twice.

the Court as evidence that a deed purporting to be an absolute conveyance for value was intended merely by way of security.

A.—(1.) Where the money paid by the grantee was grossly inadequate for the absolute purchase of the estate. (2) If the grantee was not let into immediate possession of the estate. (3) Or if he accounted for the rents to the grantor, or only retained an amount equivalent to interest. (4) Or if the expense of preparing the deed of conveyance was borne by the grantor: (Smith's Man. Eq. 290, 10th edit.; Hallilay's Digest, 359, 7th edit.)

Q.—Can a mortgagee stipulate in the mortgage deed that if the interest be not regularly paid it shall be converted into principal?

A.—No; the interest must first become due, and then, as between mortgagor and mortgagee, it may be by writing agreed that this shall be done: (Smith's Man. Eq. 294, 10th edit.)

Q.—Under what circumstances, and by what method can a mortgagee convert interest into principal so as to affect the mortgaged estate, and what will be the effect of such conversion on subsequent incumbrances of which the mortgagee had notice?

A.—The first part of the question is answered above. In any case the interest cannot be turned into principal to the prejudice of a subsequent incumbrance of which the mortgagee had notice at the time of making such agreement: (Smith's Man. Eq. 294, 10th edit.)

Q.—Where an advowson is mortgaged, and the living becomes vacant prior to foreclosure, is the mortgagor or the mortgagee entitled to present; and what remedy has either against the other, in equity, in respect to the presentation?(*a*)

A.—The mortgagee must present the nominee of the mortgagor, even though the mortgage deed contains a covenant that the mortgagee shall present. The remedy of the mortgagee is by filing a bill in equity, and if he wishes to realise his security praying a sale of the advowson: (Smith's Man. Eq. 296, 10th edit.; Hallilay's Digest, 178, 7th edit.)

Q.—When can a right of "tacking" mortgages be exercised?

A.—When a third mortgagee has lent his money *without notice* of a second, he may buy the first legal mortgage and tack, as it is called, his third mortgage to the first, and so postpone the second: (Smith's Man. Eq. 298, 10th edit.; Hallilay's Digest, 211, 7th edit.)

Q.—What are the remedies of a mortgagee to obtain repayment of his mortgage money?

A.—The mortgagee may exercise his power of sale, bring ejectment, file his bill of foreclosure, or sue on the covenant contained in the mortgage deed: (Smith's Man. Eq. 308, 10th edit.; Hallilay's Digest, 361, 7th edit.)

Q.—Under what circumstances, and by what length of time will a mortgagor be barred of his equity of redemption?

A.—The mortgagor's right will be barred where the mortgagee is in possession of the property for 20 years, during which time no acknowledgment has been made by the mortgagee of the mortgagor's title or of his right of redemption: (Smith's Man. Eq. 309, 10th edit.; Hallilay's Digest, 362, 7th edit.)

Q.—Suppose a mortgagor mortgages Blackacre to A. to secure 1000*l.*, and subsequently mortgages Whiteacre to him to secure 2000*l.*, can the mortgagor, against the will of A., the mortgagee, redeem either mortgage?

(*a*) Twice.

A.—No; he must redeem both or neither: (Smith's Man. Eq. 311, 10th edit.; Hallilay's Digest, 214, 364, 7th edit.)

Q.—If a mortgagee becomes absolute owner of the equity of redemption of the mortgaged estate, what is the effect upon the mortgage debt, *i.e.*, does the equitable merge into the legal estate, or is the mortgage still kept alive as an incumbrance on the estate distinct from the ownership?

A.—In such a case the equitable estate will merge in the legal, unless it was apparently the intention of the mortgagee, or it is manifestly for his interest to keep the incumbrance alive: (Smith's Man. Eq. 325, 10th edit.)

Q.—What is an equitable mortgage, and how can it be created?

A.—An equitable mortgage is one that can be enforced in a Court of Equity only. It may be created by the means set out in the next answer: (Smith's Man. Eq. 326, 10th edit.; Hallilay's Digest, 208, 360, 10th edit.)

Q.—How is an equitable mortgage created? And in what cases is an equitable mortgagee entitled to priority over a subsequent legal mortgagee?(*a*)

A.—By a deposit of title deeds, with or without a memorandum of deposit; or by a written memorandum showing the debtor's intention to make his lands a security for the debt. An equitable mortgagee by the deposit of title deeds will have priority over a subsequent legal mortgagee with notice of such equitable mortgage; but not otherwise: (Smith's Man. Eq. 326, 10th edit.; Hallilay's Digest, 208, 360, 7th edit.)

Q.—Suppose annuitants to be scheduled to a trust deed, but not to be made parties to the deed, do not such annuitants acquire a lien upon the trust estate?

A.—No, it is necessary that they should be made parties to the deed before they acquire any lien: (Smith's Man. Eq. 334, 10th edit.)

APPORTIONMENT AND CONTRIBUTION.

Q.—A tenant for life pays off incumbrances on the estate and does not take a transfer of the security; what are the rights of his representatives with reference to the amount paid off?

A.—His representatives will stand in the place of the incumbrancers notwithstanding there is no assignment of the mortgages to the tenant for life; for otherwise it would be making him pay the debts of another: (Smith's Man. Eq. 337, 10th edit.; Hallilay's Digest, 366, 7th edit.)

Q.—On what principle is the right and duty of contribution between sureties founded?

A.—On principles of natural justice; not on mutual contract, express or implied: (Smith's Man. 9, 340, 10th edit.; Hallilay's Digest, 366, 7th edit.)

PARTNERSHIP.

Q.—How is a partnership dissolved in ordinary cases?

A.—By death; by act of the parties; by bankruptcy of all or any of the partners; by effluxion of time, &c.: (Smith's Man. Eq. 344, 10th edit.; Hallilay's Digest, 367, 7th edit.)

Q.—In what cases will courts of equity dissolve a partnership before the expiration of the term fixed by the articles of partnership?

(*a*) Twice.

A.—If it is impracticable to carry on the undertaking at all, or at least according to the stipulations of the articles, or in case of the insanity, the permanent incapacity, or gross misconduct of one of the parties, equity will decree a dissolution before the regular time. And where a partner has been induced to enter it on a false representation, it will also be dissolved at his instance: (Smith's Man. Eq. 344, 10th edit.; Hallilay's Digest, 367, 7th edit.)

Q.—In the case of a partnership existing at the will of the parties, will equity, under any circumstance, prevent a sudden dissolution?

A.—Yes; equity will grant an injunction against a sudden dissolution if it is about to be made in ill faith, and would work irreparable injury: (Smith's Man. Eq. 345, 10th edit.; Hallilay's Digest, 367, 7th edit.)

Q.—If part of the property of a partnership firm consists of a freehold estate, and one of the partners dies intestate, will his share of the real estate belong to his heir-at-law, or personal representative?

A.—As equity considers every kind of partnership property as personal estate to all intents and purposes, the share of the deceased partner who died intestate will pass to his personal representatives, unless there is a clear expression of the intestate that it should go to the heir-at-law beneficially, or unless the partners have stipulated that freehold lands purchased by them shall descend to the heirs-at-law beneficially. And where the land and not the trade is the principal object (the trade being ancillary to it) the above principle will not apply, and the property will therefore go to the heir-at-law: (Smith's Man. Eq. 346, 10th edit.)

OF DAMAGES AND COMPENSATION.

Q.—In a contract it is stipulated that a certain sum should be liquidated and ascertained damages and not a penalty, or in the nature thereof. State the difference between the two.

A.—The substantial difference is that equity can relieve against a penalty, and compel the party who wishes to take advantage of it to accept the damages actually sustained, to be assessed by a jury; but if the amount fixed is really liquidated damages, the exact sum can be recovered: (Haynes' Eq. 121; Smith's Man. Eq. 361, 362, 10th edit.; Hallilay's Digest, 368, 7th edit.)

Q.—In what two cases can equity itself award damages?

A.—Where it can grant an injunction, or decree specific performance, equity may award damages either in addition to, or in substitution for, such remedy: (Smith's Man. Eq. 359, 10th edit.; Hallilay's Digest, 369, 7th edit.)

OF ELECTION.

Q.—What is the doctrine of election? and when does it arise in equity?(*a*)

A.—It is the choosing between two rights by a party who derives one of them under an instrument in which a clear intention appears that he shall not enjoy both. It arises in equity when a grantor or testator gives away that in which he has no interest, or the whole of that in which another person besides himself has an interest, and in the same instrument makes a gift to the owner of the property of such interest so given away. The latter cannot both take the gift and retain his own property or

(*a*) Twice.

interest; he must elect as in the case in the next answer: (Smith's Man. Eq. 365, 10th edit.; Hallilay's Digest, 368, 7th edit.)

Q.—If A. by his will bequeaths B.'s property to C., and gives B. a legacy, can B. insist on being paid the legacy, and retain his own property given to C. by A.?

A.—No; B. will be put to his election. If he takes the legacy, he must allow his own property to go to C.; if he chooses to keep his own property, the legacy, or a sufficient part thereof, will go to compensate C.: (Smith's Man. Eq, 365, 10th edit.; Hallilay's Digest, 370, 7th edit.)

OF SATISFACTION.

Q.—Explain the doctrine of "satisfaction" of portions and debts by legacies.

A.—Satisfaction is the making of a donation with the express or implied intention that it shall be taken as an extinguishment of some claim which the donee has upon the donor: (Smith's Man. Eq. 373, 10th edit.; Hallilay's Digest, 371, 7th edit.)

Q.—A father bequeaths to a child a legacy of 1000*l.*, and afterwards, in his lifetime, gives the same child a portion of 1000*l.*; on the father's death can the child claim the legacy?

A.—No; the legacy is satisfied or adeemed by the advancement made in the testator's lifetime: (Smith's Man. Eq. 374, 10th edit.; Hallilay's Digest, 371, 7th edit.)

CANCELLING, DELIVERING UP, AND SECURING OF DOCUMENTS.

Q.—In what case will the Court of Chancery at the instance of persons having limited or ulterior interests in real estate, direct the title deeds to be secured or brought into Court for preservation?

A.—The Court of Chancery will make such an order where it clearly appears that there is danger of a loss or destruction of the instruments in the hands of the persons possessing them; and also, that the interest of the plaintiff is not too contingent or too remote to warrant the proceeding: (Smith's Man. Eq. 394, 10th edit.)

OF INTERPLEADER.

Q.—What is a bill of interpleader? Give an instance.(*a*)

A.—It is one filed by a person from whom two or more other persons whose titles are in some way connected, and whose rights he cannot readily determine, have claimed the same thing, wherein he claims no interest; and the object of the bill is to compel the two claimants to litigate the matter between themselves without involving him therein: (Smith's Man. Eq. 395, 10th edit.; Hallilay's Digest, 372, 7th edit.)

Q.—Under what circumstances may a bill of interpleader be filed, and what is required of the plaintiff in such a suit?

A.—It is necessary that the title of the claimants must spring from a common source—that the person filing a bill has no interest in the subject matter, and that he should be in a position to admit the title of either claimant. Actual proceedings either at law or equity are not necessary, before filing the bill. But there must be no collusion between the

(*a*) Twice.

plaintiff and either of the parties, and hence it is that the plaintiff is required to make an affidavit to that effect, and if there be money due by him, that he should bring it into Court, or at least offer to do so by his bill: (Smith's Man. Eq. 396, &c., 10th edit.)

Q.—What affidavit must a plaintiff make on filing a bill of interpleader?

A.—That the bill is not exhibited in collusion with either of the parties: (Smith's Man. Eq. 398, 10th edit.; Hallilay's Digest, 373, 7th edit.)

BILLS TO ESTABLISH WILLS.

Q.—Describe the process of proving a will in Chancery.

A.—A devisee in possession may file a bill against the heir-at-law, even although the latter has brought no action against the former, and no trusts are contained in the will. The proceedings are the same as in other suits. Where a will is contested and the parties are dissatisfied with the probate, the Court in which the matter is depending will cause the validity of the will to be tried; and if the will is established a perpetual injunction may be decreed: (Smith's Man. Eq. 402, 10th edit.)

OF INJUNCTIONS.

Q.—What is an injunction?

A.—A judicial process whereby a party is required to do or refrain from doing a particular thing: (Smith's Man. Eq. 403, 10th edit.; Hallilay's Digest, 373, 7th edit.)

Q.—How many kinds of injunctions were there?

A.—Injunctions were formerly of two kinds—(1) to restrain proceedings in other courts, which were called common injunctions, and formerly granted as of course; and (2) special injunctions, whereby parties are restrained from committing waste or injury to the property of others, &c. But this distinction is now abolished. A *primâ facie* case must now be made by the bill, supported by affidavit, in order to obtain an injunction, and the practice with respect to the common injunctions is assimilated to that of special injunctions: (Smith's Man. Eq. 403, 10th edit.; Haynes' Eq. 256; Hallilay's Digest, 373, 7th edit.)

Q.—Define a special injunction; and how it is obtained?

A.—A special injunction is defined *suprà*. It is obtained by filing a bill containing a prayer for the writ. Unless the order is applied for *ex parte*, a copy of the bill and a notice of the intended motion are served on the defendant. Counsel then moves the court, supported by sufficient evidence, for an order that the writ may issue. If the order be granted it is drawn up in the usual way, after which the writ is prepared, sealed, and served: (Smith's Man. Eq. tit. 4, ch. 4, 10th edit.; Hallilay's Digest, 375, 7th edit.)

Q.—Under what circumstances are other courts subject to restraint from courts of equity; and to whom is the process directed?

A.—Whenever by accident, fraud, or otherwise, it would be against conscience to proceed in another court equity will, by injunction, addressed to the parties who are so proceeding, restrain them from so doing: (Smith's Man. Eq. 404, 10th edit.; Haynes' Eq. 257; Hallilay's Digest, 373, 7th edit.)

Q.—Will equity restrain a tenant for life from pulling down the

mansion house, or felling timber planted and left standing for ornament, when he holds his estate without impeachment of waste?

A.—Yes; such acts being considered in equity as unjustifiable, and as occasioning an irreparable injury to the interests of other parties. These acts are known as "equitable waste": (Smith's Man. Eq. 410, 10th edit.; Haynes' Eq. 281; Hallilay's Digest, 379, 7th edit.)

Q.—Mention some familiar instance in which Courts of Equity will interfere by injunction to prevent loss or injury.

A.—In addition to the case pointed out in the preceding answer, an injunction would be granted to restrain voluntary waste, as a tenant for life opening mines; and to prevent waste between tenants in common, co-parceners or joint tenants, as well as to protect patents and copyrights: (Smith's Man. Eq. 410, &c. 10th edit.; Hallilay's Digest, 377, *et seq.* 7th edit.)

Q.—Will the court interpose to stop a private nuisance?

A.—Yes; if there be such an injury arising out of it which cannot from its nature be adequately compensated by damages, or if the nuisance be one which from its continuance must occasion a constantly recurring grievance which cannot be prevented otherwise than by injunction: (Smith's Man. Eq. 412, 10th edit.)

Q.—What property has the receiver of private letters therein? and under what circumstances and in what way will equity prevent their publication?

A.—The property which a receiver of private letters has therein is only of a qualified kind; for the property therein beyond the purposes for which they were sent is in the sender. Courts of equity will therefore restrain by injunction the publication of private letters where this is attempted without the consent of the sender: (Smith's Man. Eq. 414, 10th edit.: Hallilay's Digest, 377, 7th edit.)

NE EXEAT REGNO.

Q.—What is a writ of *ne exeat regno?*

A.—A writ of *ne exeat regno* is a prerogative writ which is issued to prevent a person from leaving the realm, even though his usual residence is in foreign parts: (Smith's Man. Eq. 416, 10th edit.)

Q.—In what cases and upon what grounds is a writ of *ne exeat regno* granted?

A.—Only when the plaintiff is apprehensive that the defendant is about to leave the kingdom for the purpose of avoiding the plaintiff's demands. As a rule, it can only be obtained when the plaintiff has an *equitable* money demand, certain in nature and actually due: (Smith's Man. Eq. 416, 417, 10th edit.; Hallilay's Digest, 381, 7th edit.)

PROTECTION OF PROPERTY BY TAKING AWAY THE POSSESSION, OR APPOINTING A RECEIVER, ETC.

Q.—What are the powers of a receiver?

A.—His powers are very limited. He must apply from time to time to the court for authority to do such acts as may be beneficial to the estate. For instance, he cannot bring ejectment without the authority of the court: (Smith's Man. Eq. 419, 10th edit.; Hallilay's Digest, 382, 7th edit.)

Q.—What is the nature, and what the duties of his office?

A.—He is treated as an officer of the court, and his duties are to get in the rents, income, or profits of the estate, and secure them for the benefit

of the person entitled thereto: (Smith's Man. Eq. 418, 10th edit.; Hallilay's Digest, 382, 7th edit.)

OF INFANTS.

Q.—Who are persons not *sui juris*? and whence does the superintendence of infants exercised by the Court of Chancery arise?

A.—Persons not *sui juris* are infants, married women, and lunatics. The care of infants belongs to the Crown as *parens patriæ*; and this prerogative was delegated to the Court of Chancery from its establishment: (Haynes' Eq. 122, 123; Smith's Man. Eq. 422, 10th edit.)

Q.—What protection does a court of equity give to infants having property within the jurisdiction? Can a father be deprived of the custody of his children? (*a*)

A.—The Court of Chancery will appoint a suitable guardian to an infant where there is no other who will or can act, at least where the infant has property. The court will also remove or assist guardians on sufficient cause, and control their conduct. The court will also deprive the parent of the custody of his children on proof of gross ill-treatment, or that the parent is living in gross immorality, or acts in a manner injurious to the morals or interest of his children: (Smith's Man. Eq. 422, 10th edit.; Hallilay's Digest, 383, 7th edit.)

Q.—Is property essential to maintain the jurisdiction or protection referred to above?

A.—It is not; nevertheless, if the infant has no property, the court cannot exercise its jurisdiction successfully: (Haynes' Eq. 122, 123; Smith's Man. Eq. 423, 10th edit.)

Q.—Who are wards of Chancery?

A.—Properly a ward of Chancery is a person who is under the protection of a guardian appointed by the Court of Chancery. But whenever an infant is interested in a suit instituted in that court he is treated as a ward of court: (*Gynn* v. *Gilbard*, 1 D. & S. 356; Smith's Man. Eq. 425; 10th edit.)

Q.—When an infant is made a ward of Chancery, how does that affect his person and property?

A.—All acts affecting his person and property must be done under the express or implied direction of the court, otherwise it is treated as a violation of the authority of the court, punishable by attachment: (Smith's Man. Eq. 426, 10th edit.; Hallilay's Digest, 384, 7th edit.)

Q.—If an infant has property, but has a father living, will the court allow the father a sum out of the infant's income for his maintenance?

A.—Not if the father is able to maintain the infant; but if the father is not so able it may do so: (Smith's Man. Eq. 426, 10th edit.; and see 23 & 24 Vict. c. 145, s. 26; Hallilay's Digest, 385, 7th edit.)

Q.—If a man marries a ward in Chancery with the consent of her guardian, and not knowing that she is a ward, is he deemed guilty of a contempt?

A.—Yes; he is, as well as all others concerned in aiding the marriage, guilty of a contempt, even although he should be ignorant that she was a ward of court: (Smith's Man. Eq. 430, 10th edit.; Hallilay's Digest, 385, 7th edit.)

(*a*) Twice.

Q.—What is the practice of the court as to the property of a ward who has married without a settlement soon after attaining majority?

A.—The court will decline to order the fortune of the ward to be paid out of court on her consent, and will refuse to do more than order payment of the income to the husband during their joint lives, or until further order, without prejudice to any question, and with liberty for the parties at any time to apply to the court on the subject: (Smith's Man. Eq. 432, 10th edit.)

OF PERSONS OF UNSOUND MIND.

Q.—What is the origin of the Lord Chancellor's jurisdiction in lunacy, and how derived; and to what other judges has it been recently extended?

A.—The sovereign, as *parens patriæ*, had from the first the care of idiots and lunatics who had no other guardian. And as the Chancellor is the person by whom the Crown exercises its powers, as keeper of the royal conscience and delegate of the Crown, the authority of the Chancellor is clearly derived from the Crown. By the 14 & 15 Vict. c. 83, this jurisdiction is extended to the Lords Justices of the Court of Appeal: (Smith's Man. 434, 436, 10th edit.; Hallilay's Digest, 388, 7th edit.)

OF MARRIED WOMEN.

Q.—What jurisdiction have courts of equity over rights of property of married women?

A.—Equity exercises an exclusive jurisdiction over the rights of married women, which may be considered (1) in reference to separate estate; (2) as to equity to a settlement; and (3) as to right of survivorship in equitable interests: (Haynes' Eq. 112, 113; Smith's Man. Eq. 437, *et seq.*, 10th edit.)

Q.—Define (*a*) paraphernalia; (*b*) pin money.

A.—(*a*) The wife's paraphernalia are personal apparel and ornaments of the wife suitable to her rank and condition in life. Old family jewels, though worn by her, are not part of her paraphernalia, unless she has acquired them by gift or bequest; (*b*) pin money is defined in next answer: (Smith's Man. Eq. 441, 10th edit.)

Q.—Is pin money considered as an absolute gift? and state, if a married woman permits her husband to receive it, how many years' arrears can be recovered against him?

A.—Pin money is not considered as an absolute gift, but a sum payable by the husband to the wife, to be applied by her in attiring her person, suitable to her husband's rank in life; only one year's arrears can be recovered by her, and none by her representatives: (Haynes' Eq. 217; Smith's Man. Eq. 441, 10th edit.; Hallilay's Digest, 270, 390, 7th edit.)

Q.—Can a husband dispose of his wife's paraphernalia by deed or will; (1) at law; and (2) in equity?

A.—At law the husband may, in his lifetime, but not by will, dispose of his wife's paraphernalia, with the exception of necessary apparel. If the articles were given by the husband either before or after marriage, equity will recognise the claim of the husband and his creditors. But if the articles were given to the wife by any one else, they will be deemed absolute gifts to her separate use; and then, if received with the consent of the husband, neither he nor his creditors can dispose of them: (Smith's Man. Eq. 442, 10th edit.)

Q.—Can property be limited to the separate use of a woman then unmarried, either with or without a restraint against alienation; and will these restrictions be enforced—(1) while unmarried; (2) while married; (3) while a widow?(*a*)

A.—Property may be so given, and when the woman marries, the separate use clause will be enforced against the husband and his creditors; and during the coverture the wife will be restrained from alienating her property, as was decided in the case of *Tullet* v. *Armstrong* (1 Beav. 1); but so long as she is single, and whenever she becomes a widow, she has full powers of alienation, notwithstanding the clause on restraint: (Haynes' Eq. 210, 211; Smith's Man. Eq. 443, *et seq.*, 10th edit.; Hallilay's Digest, 390, 7th edit.)

Q.—If a wife obtain a judicial separation from her husband, under the stat. 20 & 21 Vict. c. 85, in what character is she to be regarded as respects her property; and in case of subsequent cohabitation, what, in the absence of agreement, will be her rights in respect of her property?(*b*)

A.—When judicially separated she is to be deemed a *feme sole* as regards her property; and in case of subsequent cohabitation it is to be held to her separate use, subject to any agreement: (Smith's Man. Eq. 447, 10th edit.)

Q.—Can a married woman dispose by will of personal property settled to her "separate use" by pre-nuptial settlement?

A.—She can, unless the contrary is expressly stipulated or implied by such settlement: (Smith's Man. Eq. 455, 10th edit.)

Q.—What equity has a wife, and in respect of what property against the trustees of her bankrupt husband; and wherein does it differ from what her equity would have been had there been no bankruptcy?

A.—If the wife has any real estate, or an absolute interest in personal estate (except perhaps a term of years) which cannot be reduced into possession by the husband without a suit in equity, and the husband applies to the court for that purpose, equity will not give it up to him without requiring him to make a suitable settlement on the wife and the issue of the marriage, unless the wife and children are already amply provided for under a prior settlement, or the right to the settlement is waived or lost. As against the husband, it is only necessary that the provision for the wife should commence from his death, but as against the trustee in bankruptcy that the provision should commence immediately; because the husband is in this case less capable of affording a suitable support: (Smith's Man. Eq. 466–472, 10th edit.; Hallilay's Digest, 393, 7th edit.)

Q.—Will a contract in writing by a married woman, neither referring to her separate estate nor professing to bind it, but professing to bind herself personally only, bind her separate estate?

A.—The contract will bind her separate estate, because the contract must have been given to operate in some way, and it can have no operation except as against her separate estate, as she cannot bind herself personally: (Smith's Man. Eq. 460–463, 10th edit.; Haynes' Eq. 214, 215; Hallilay's Digest, 391, 7th edit.)(*b*)

Q.—What is meant by a wife's equity to a settlement?(*b*)

A.—It is a right which a wife has *in equity* to have a settlement made upon her out of real or absolute personal estates (save, perhaps, a term of years), belonging to her, which the husband cannot obtain possession of

(*a*) Thrice. (*b*) Twice.

without the aid of a court of equity: (*Lady Elibank* v. *Montolieu*, 1 L. C. Eq. 341, 2nd edit.; Smith's Man. Eq. 466, 10th edit.; Hallilay's Digest, 392, 7th edit.)

DISCOVERY. (*a*)

Q.—What is a bill of discovery?

A.—Strictly speaking, one that is filed for discovery of facts resting in the knowledge of the defendant or of deeds or documents in his custody or power, and seeking *no relief* in consequence of the discovery: (Haynes' Eq. 165; Smith's Man. Eq. 480, 9th edit.; Hallilay's Digest, 398, 7th edit.)

Q.—State some of the eighteen grounds on which a bill of discovery may be resisted.

A.—1. That the subject is not cognisable in any court, or that the subject matter is beneath the dignity of the court. 2. That the plaintiff is not entitled to the discovery by reason of some personal disability. 3. That the plaintiff has no title to the character in which he sues, or no interest in the subject matter, or that the discovery is not material. 4. That the policy of the law exempts the defendant from the discovery. 5. That the discovery relates to the defendant's case, and not to the plaintiff's. 6. That the defendant is a mere witness. 7. That the discovery would subject the defendant to a penalty or forfeiture, or to a criminal prosecution. 8. Where it is clear that no action or defence is maintainable at law. 9. Where it is sought to compel an arbitrator to disclose the grounds on which he made an award. 10. That the defendant is a purchaser for valuable consideration without notice, and has an equity equal with the plaintiff: (Smith's Man. Eq. 481, *et seq.*, 9th edit.; Hallilay's Digest, 399, 7th edit.)

OF PERPETUATING TESTIMONY. (*a*)

Q.—What is the object of a bill to perpetuate testimony?

A.—It is a bill filed to preserve testimony when it is in danger of being lost before the matter to which it relates can be made the subject of judicial investigation: (Smith's Man. Eq. 486, 9th edit; Haynes' Eq. 172; Hallilay's Digest, 400, 7th edit.)

Q.—If a devisee of real estate wishes to establish his title to the devised estate as against the heir, what course would you advise him to take?

A.—To prove the will in solemn form, or file a bill to perpetuate the testimony of the attesting witnesses to the will: (Smith's Man. Eq. 487, 9th edit.; Hallilay's Digest, 400, 7th edit.)

THE PRACTICE OF EQUITY.

Q.—What is the order of procedure of the equity judges?

A.—It is the following—(1) the Lord Chancellor; (2) the Lords Justices; (3) the Master of the Rolls; and (4) the three Vice-Chancellors. The Lords Justices are placed before the Master of the Rolls as occupying a higher rank in *judicial importance*, though as regards legal precedence the Master of the Rolls ranks before them: (Haynes' Eq. 32; Hallilay's Digest, 404, 7th edit.)

(*a*) The chapters on Discovery, &c., are omitted in the last (10th) edition of Smith's Manual of Equity.

Q.—What is meant by pleading, and what by demurring to a bill?

A.—A plea is a defence used when the defendant wishes to show special matter in answer to the plaintiff's bill, upon which an objection is not apparent so as to admit of a demurrer. It may ask the court to dismiss or delay the suit.

A demurrer is an objection taken as a defence when that objection appears on the face of the bill: (Haynes' Eq. 72-75; Hallilay's Suit in Equity 24, 27; Hallilay's Digest, 416, 421, 422, 7th edit.)

Q.—Fraud, accident, and mistake occur in any kind of suit—at common law as well as in equity—but state any advantage had in equity before the Evidence Acts of 1851 and 1854.

A.—The advantage in equity was that a discovery might have been obtained of facts or documents from the *parties* to the suits. But since the above Acts a court of law has as full power to compel discovery as a court of equity: (Haynes' Eq. 164, 165; Hallilay's Digest, 398, 7th edit.)

Q.—What effect has the appointment of the chief clerks in the place of the late Masters in Chancery had?

A.—The chief advantage is that expedition in taking accounts and making inquiries has been gained: (Haynes' Eq. 55, 56.)

Q.—When a plaintiff's bill of complaint has been dismissed by decree, how must he proceed if he wishes to appeal at once to the House of Lords?

A.—He should get the decree signed by the Lord Chancellor, and then enrol it, which will prevent a re-hearing before the judge who pronounced the decree, or an appeal to the Lords Justices of appeal, and entitle the appellant to go at once to the House of Lords: (Haynes' Eq. 87; Hallilay's Digest, 445, 7th edit.)

Q.—If the same party wishes to avoid the expense of an appeal to the House of Lords against a decree of the Master of the Rolls, or of a Vice-Chancellor, what is his proper course?

A.—He must enter a *caveat* against the enrolment of the decree: (Haynes' Eq. 87; Hallilay's Suit in Equity, 68, 69; Hallilay's Digest, 446, 7th edit.)

Q.—In what reign was the jurisdiction of the House of Lords in Chancery appeal established?

A.—In the reign of Charles I., or perhaps not until that of Charles II. (Hallam's Const. Hist. Eng. p. 24, vol. 3, 9th edit.; Haynes' Eq. 59; Hallilay's Digest, 405, note, 7th edit.)

A DIGEST

OF THE

EXAMINATION QUESTIONS AND ANSWERS IN BOOK-KEEPING.

Question.—What is the object sought in keeping books of account ?(*a*)

Answer.—The object is to enable a merchant or tradesman at any moment to ascertain the true state of the whole or any part of his affairs with accuracy and expedition.

Q.—What is the difference between a *bonâ fide* debt, and a liability merely ? Give examples.

A.—A debt is either a sum of money or a quantity of goods which one person owes to another, for which value has been given by the latter. A liability, as distinguished from a debt, is a claim which a person has, or may have, and for which no value may have been given for the same. Thus, if A. purchase of B. a quantity of goods, he owes to B. the value of such goods, and this is a debt due to B. from A. But if A. guarantees to B. the due performance of some work, which is not performed; here A. becomes *liable* to B. for the amount of loss sustained, and his contract not being in the nature of a money transaction, would be termed a liability.

Q.—What is the duty of a merchant or trader in reference to book-keeping; and what is likely to result from a neglect of that duty ?

A.—It is the duty of every person in trade to keep a faithful record of all business transactions, whether his affairs are in a prosperous condition or otherwise. It should also be done with due despatch, else this of itself will give rise to great uncertainty. Unless a merchant properly and sufficiently keeps his books, he will be unable to form any adequate idea whether his business is profitable or not, and may be driven almost unknowingly into bankruptcy, Further, gross negligence or fraudulent conduct in keeping accounts is now a criminal offence. It should also be remembered that a thorough system of book-keeping is a great check on all engaged in the business, as any irregularity will be speedily detected.

Q.—What are the meanings of the terms "debit" and "credit," and on which side of the account should entries under those respective headings be placed ?

A.—A debit is anything which a person owes to you, and a credit is anything which you owe to another. Thus, if you sell to another goods not paid for at the time, you *debit* their value in your books to the purchaser. But if you purchase goods on trust you would credit the

vendor in your books with their value. The debit or Dr. entries should always be placed on the left hand side of the account, and the credit or Cr. entries on the right.

Q.—Give a general description of the system of book-keeping by single entry and how is it distinguished from double entry?

A.—See *ante*, p. 50.

Q.—What is the principle of double entry; and what is its great value?

A.—This is set out, *ante*, p. 50. Its great value is as a check to the posting of various accounts. A merchant may also at any time ascertain the amount of stock he has in hand without deranging his business, and may ascertain what profit he has made in any particular branch or by any particular goods.

Q.—State the names of the books which are essential to the keeping of accounts by single entry; also the nature of the entries to be made in each book? (*a*)

A.—See *ante*, p. 53, *et seq.*

Q.—If a tradesman kept his books by single entry, in what way would he ascertain the amount of capital which he was employing in his business?

A.—He would ascertain the amount by making out an account as follows:—On the Dr. side of the account he would place all sums he has drawn from the business, and on the Cr. side he would place the amount of capital he had at the beginning of his financial year or at starting, and any further capital introduced, adding to it interest at five per cent., and also the profit as ascertained by the profit and loss account, and strike a balance. This placed on the Dr. side, and afterwards carried forward, would represent the net capital he had in his business at the time he ascertained it.

Q.—What is the object of an account current? Give a specimen with interest calculated and balanced off. (*b*)

A.—The object of an account current is to show all the transactions of a mercantile house with one of its correspondents during a given time, usually six or twelve months. For the entries made in it, and an example as asked for by the question, see *ante*, pp. 51, 52.

Q.—A., a merchant at Brazil, consigns 500 tons of sugar to B., his consignee, in London, and draws a bill of exchange at three months on B. for 100*l.* on account of the consignment. B. realises the sugar, and renders to A. an account of the transaction. Make out such an account.

A.—This account may easily be made out from the accounts given *ante*, pp. 51, 52.

Q.—State an account of 4000*l.* cash received and invested in 3 per cent. consols at 92¼, less brokerage. The stock is afterwards sold in two equal sums, one at 91, and the other at 89½, less brokerage.

A.—Dr. B. IN ACCOUNT WITH A. (Broker). Cr.

1872.		£	s.	d.	1872.		£	s.	d.
Jan. 1.	To purchase of £4324 6s. 6d. Consols at 92¼ less ¼ per cent. brokerage	4000	0	0	Jan. 1.	By cash	4000	0	0
					Feb. 1.	By sale of £2162 3s. 3d. Consols at 91 less ¼ per cent. brokerage...	1943	3	10
Feb. 3.	To balance	3872	9	8	Feb. 2.	By sale of £2162 3s. 3d. Consols at 89½ less ¼ per cent. brokerage...	1929	5	10
		7872	9	8			7872	9	8

(*a*) Eight. (*b*) Four.

Q.—State an account between a wholesale house and a tradesman, showing goods sold; goods returned and acceptances given by the tradesman, some being paid and some dishonoured with expenses.

A.—The account of the wholesale houses would have the goods sold and the acceptances returned with the expenses placed on the Dr. side. The acceptances given and the goods returned would be shewn on the Cr. side. A balance being struck, the amount, if the dishonoured acceptances and expenses were more than the goods returned, would be placed on the Cr. side as an amount due, and carried forward to the Dr. side; if less, would be placed on the Dr. side and carried forward to the Cr. side, showing that, even although the bills are dishonoured, yet the amount of goods returned outbalances the amount of the dishonoured bills and expenses.

Q.—A., a shipbroker in London, advances to B., a shipowner 1000*l.* against the homeward freight of a ship belonging to B., which A. is employed to collect. A. collects the freight, pays the seamen's wages and other disbursements, repays himself his advance with interest, and accounts to B. for the balance. Make out such an account.(*a*)

A.—Dr. B. IN ACCOUNT WITH A. Cr.

To Cash	£1000	0	0	By freight collected ...	£1700	0	0
Interest thereon ...	10	0	0				
„ Wages	100	0	0				
„ Other disbursements ...	100	0	0				
„ Balance	490	0	0				
	£1700	0	0		£1700	0	0
					£490	0	0

Q.—A. is steward to Lord B., and receives his rents, making certain payments on his account; on which side of the account must the receipts and payments respectively be entered?

A.—The receipts of the rents, &c., should be entered on the debtor side of the account, and the payments on the creditor side.

Q.—Explain the meaning of an "account sales;" and if you have seen an "account sales," state the information which it furnished?

A.—This is fully explained *ante*, p. 51.

Q.—Describe briefly the mode of book-keeping to be used by a commission agent, who in the course of the year receives and pays moneys for his employers, and also transacts commission business for them, which would show at certain times the state of accounts between himself and his employers, and afford him an assurance that all his accounts were correct.

A.—This account would, if goods were consigned to the agent, be termed an "account sales," a full account of which, with an example, will be found *ante*, p. 51. If the goods were not consigned to the agent, then the account would be in the form of an account current, which will be found fully detailed, and an example given, *ante*, p. 52.

Q.—Give the appropriate heading of an account between an agent and his employer, and mention the respective sides on which the receipts and payments should be placed.(*a*)

A.—See the heading and form of this account, *ante*, p. 52.

(*a*) Twice.

Q.—What is the difference between personal and impersonal accounts?(*a*)

A.—Personal accounts are those in which *persons* are concerned, and are those used in single entry. Impersonal or real accounts are such as are opened merely for merchandise or any description of property, as cash, bills, ships, &c., and are only used in double entry, the cash account excepted.

Q.—What is the difference between a prime entry and a ledger entry?

A.—A prime entry will give a full description of the goods sold with weight, &c., in addition to the date and price. Also full particulars of bills, payments, &c. But a ledger entry will simply state "To goods," or "By cash," or as the case may be.

Q.—Give the proper headings of the books required to be kept by a merchant or tradesman in keeping accounts by single entry.

A.—See them detailed *ante*, p. 53. (*b*)

Q.—Describe the purposes of a day-book, invoice-book, bill-book, cash-book, and ledger, and the nature of the entries to be made in each book.(*c*)

A.—See these set out, with examples of entries in each book, *ante*, p. 54.

Q.—Describe the purposes of a cash-book, account-book, stock-book, journal, and waste-book?(*d*)

A.—As to the purposes of a cash-book, see *ante*, p. 55. As to a journal and waste-book, these are not used in book-keeping by single entry; but in double entry, the waste-book is used as a rough record of all transactions as they arise, and sometimes opens with a statement of the assets and liabilities of the trader. In the journal, the transactions recorded in the waste-book are prepared to be carried to the ledger by having their proper debtors and creditors ascertained and specified.

Q.—Give in detail, and in numerical order, the entries to be made in each book, so as to trace the purchase of goods by A. to the sale to B. and the payment by B. In like manner give in detail the entries to be made by B. in his books.(*e*)

A.—A. would enter the purchase of the goods in his invoice-book. The cash paid for them he would enter on the right hand or creditor side of his cash-book; or, if he paid for the goods by a bill, he would enter it in his bills payable book. On the sale to B., A. would enter that transaction in his day-book, and the cash received for the goods on the left hand or debtor side of his cash-book; or, if he received a bill as payment, in his bills receivable book. The items in these various books would then be posted by A. to the proper account in the ledger. (See forms of all these books and entries, *ante*, pp. 54, 55.) B. would, in like manner, enter the purchase of the goods in his invoice-book, cash-book, or bill-book according to whether the goods were paid for in cash or by a bill, and finally in his ledger.

Q.—A wholesale house (say B. & Co.) sells to A. goods to the amount of £50, drawing a bill on him for the amount less 5 per cent.. discount. Give a form of the account between B. & Co. and A. Explain the entries in the various books of B. & Co. necessary in the above transactions?

A.—This may be easily answered from the preceding.

Q.—B. sells goods to A. for £100, and obtains A.'s acceptance at three months for the amount. He then discounts the bill at his bankers. Give

(*a*) Twice. (*b*) Ten. (*c*) Seventeen. (*d*) Five. (*e*) Thrice.

the entries with dates that B. must make in his books and show the transaction.(*a*)

A.—B. will enter the goods in his day book and debit them to A. in the ledger. The bill he will enter in his bills receivable book with all the necessary information set out, *ante*, p. 55, and also give A. credit for it in his ledger. On discounting it B. will enter the amount less discount in his cash book. A form of account may be made out without difficulty from the preceding answers.

Q.—A merchant receives a three months' bill, dated the 1st day of January. On what day would he enter it as "*payable*" in the bill book?

A.—He would enter it as payable 4th April, three "days of grace" being allowed in this country on such bills.

Q.—A firm in India, having a corresponding house in England, remits them (say 5000*l.*) in bills on London houses as cover for bills for a similar amount drawn by them upon the London firm. Give the entries required in the London books as to the bills so remitted.

A.—The bills drawn on the London firm when accepted by the latter, will be entered in the "bills payable" book, while the bills sent to them on the London houses will be entered in the "bills receivable" book. The ledger entries have been previously described. The nature of the entries are set out *ante*, p. 55.

Q.—A. sells goods to B. for 100*l.*, and receives half in cash down, and the remainder secured by a bill at three months. State the respective books in which the transactions are to be entered.(*b*)

A.—This question is answered above.

Q.—What is the object of the cash-book, and on which side of this account is money received, entered?(*c*)

A.—See *suprà, et ante*, p. 55.

Q.—A. gives B. his acceptance. How would each enter the transaction in his book?

A.—A. would enter it in his bills payable book and B. in his bills receivable book in the form given *ante*, p. 55.

Q.—What is a bills receivable and a bills payable book, and what are its uses?(*d*)

A.—See *suprà, et ante*, p. 55.

Q.—What is meant by "liability on bills receivable?"(*e*)

A.—So long as the holder of the bill has possession of the bill, no liability against him attaches; but the moment he endorses it away to a third party, he becomes liable to such party, and any subsequent holder of it to the amount of such bill. He must, however, receive notice of the dishonour of the bill in due time. The indorser may also save himself from any liability on the bill by indorsing it "sans recours," or, shortly, "sans rec."

Q.—Give a specimen of entries in the book for bills receivable and payable.

A.—See fully, *ante*, p. 55.

Q.—State the difference between bills payable and bills receivable, and show how they should be respectively entered in a merchant's books at the annual stock-taking.

A.—Bills payable are bills accepted by the merchant, the payment of which he must meet at the proper time. Bills receivable are those drawn by or indorsed to him, and the amount of which he will receive in due

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(*a*) Six. (*b*) Thrice. (*c*) Five. (*d*) Nine. (*e*) Twice.

course. In the annual balance-sheet the merchant will place the "bills payable" by him on the Dr. side, and the bills receivable on the Cr. side of the account.

Q.—If a bill of exchange is drawn by a vendor of goods and accepted by a purchaser, state the book in which the particulars of such bill should be entered, and the name by which the vendor and purchaser respectively would describe such books, having regard to the position of each party in reference to the bill; and what entry should be made when it is paid?

A.—See *suprà, et ante,* p. 55.

Q.—What does the balance of a cash-book show, and on which side of the cash account must the balance, if any, always be, and why? (*a*)

A.—The balance shows the state of the cash-book, and of course it must always be on the debtor side, for it is impossible to pay more than is received.

Q.—What is the difference between "Dr." and "Cr." at the head of an account? (*b*)

A.—The "Dr." side of an account shows the incomings or receipts, and the "Cr." the payments or outgoings; or as it is sometimes abbreviated "in Dr., out Cr." These terms are a contraction of "debit and credit."

Q.—Explain what is meant by the phrase posting books; and give a short example of the mode of doing it. (*c*)

A.—Posting books is transferring the entries made in the other books to the ledger, collected and arranged in the order of their dates under the names of the various persons to which they belong. (For examples, see *ante,* pp. 55, 56.)

Q.—What is a ledger account?

A.—See *suprà, et ante,* p. 56.

Q.—Do you enter the accounts or items of the cash-book into the ledger? and if so, state how they are arranged in the ledger. (*d*)

A.—See *suprà, et ante,* p. 56.

Q.—Give a debtor and creditor account of a cash-book and ledger. (*d*)

A.—See these, *ante,* pp. 55, 56.

Q.—What is the use of a rest in a cash account, and what is meant by this? (*d*)

A.—Rests in the cash account are usually used for the purpose of charging interest. Making rests means striking balances in the account at fixed periods.

Q.—Supposing an account between two firms, kept as an interest account, to go on for several years with annual rests, does or not this mode involve a charge on the debtor of compound interest?

A.—It does; for interest is reckoned on each item on both sides of the account to the annual rest, and the balance on the interest is added to the balance of the account, and the total balance carried forward becomes the principal, on which interest will be computed at the next annual rest. This must shew a charge of compound interest.

Q.—What is a stock account? State the items of which it is composed, on the one side and on the other, and what is represented by the balance?

A.—A stock account is an annual statement giving a summary of the various goods bought and sold during the year, and also the value of all fixtures, machinery, buildings, &c. The goods bought, with the value of

(*a*) Six. (*b*) Four. (*c*) Five. (*d*) Twice.

the plant, &c., will be on the Dr. side, and those sold on the Cr. side. The goods will be valued at cost price, or, where necessary, at a little under cost price, to allow for depreciation. The fixtures will be valued at about 10 per cent. less than their last valuation, to allow for wear and tear. The balance will show the net value of the stock-in-trade and fixtures, &c., of the merchant.

Q.—What is the object of stock taking, and how is it taken?

A.—See the answer, *ante*, p. 56.

Q.—State the names and natures of the account constituting the profit and loss account.(*a*)

A.—See this account full detailed, *ante*, p. 56.

Q.—On which side of a profit and loss account are the profits, and on which side the losses, entered?(*a*)

A.—The losses are entered on the debtor side and the profits on the creditor.

Q.—What is the difference between gross profit or loss and net profit or loss.(*b*)

A.—The gross profit does not show whether the trader has lost or gained, as bad debts, expenses, &c., are not deducted; while the net profit, having these deducted, will show the tradesman's true position.

Q.—What is the object of balancing a set of books of a merchant and preparing a periodical balance-sheet of affairs?(*c*)

A.—The object of balancing a set of books is to show the difference between the debtor and creditor of each account in the ledger. The balance-sheet, independently of its other advantages, enables the merchant to ascertain his real worth or net capital.

Q.—What is the meaning of the term "capital" in a business?(*b*)

A.—See *ante*, pp. 56, 57.

Q.—Give an example of a capital account.

A.—This may be made out by showing the amount of money you pay into or draw out of your business. On the Dr. side place all sums you have withdrawn, and on the Cr. side the capital you had at commencement and any added since, and the interest and profit taken from the profit and loss account. The balance will show the net capital you then have in the concern, and will be carried as your net capital until the next time you make out a similar account.

Q.—If a merchant desires to know how he stands with reference to the whole of his transactions at any given time, how does he proceed? Give the name of the summary of his accounts to which he must have recourse, and describe it.

A.—He must make out a balance-sheet, which is fully described, *ante*, p. 56.

Q.—What does a balance-sheet consist of, how is it finished, and what does it show?(*d*)

A.—See this fully detailed, and an example, *ante*, p. 56.

Q.—What is the difference between a balance-sheet and a profit and loss account?(*e*)

A.—The balance-sheet contains on the Cr. side all balances of accounts owing *to* you, to which are added cash in hand and the value of unsold goods. On the Dr. side are entered your capital at commencement and all balances owing *by* you. The profit and loss account contains on the Dr. side the *losses*, or bad debts, discounts, &c.; and on the

(*a*) Four. (*b*) Twice. (*c*) Five. (*d*) Six. (*e*) Nine.

Cr. side the *profits* are shown by the stock account, abatements, &c. These two accounts should correspond if properly kept.

Q.—What is a trial balance, and what does it prove?

A.—Trial balances are only used in book-keeping by *double* entry. The trial balance is one drawn up before making the entries for profit and loss and goods on hand. Its object is to test and prove the accuracy of the ledger entries.

Q.—Describe a banker's pass-book, and state what correspondence there should be between that book and the cash-book.(*a*)

A.—A banker's pass-book contains a record made by the bankers of all sums paid in to the merchant's account at his banker's, and all cheques drawn by him upon his banker and paid by the banker. The balance at the banker's should correspond with the balance of the cash-book.

Q.—How are the annual profits of a partnership business to be ascertained? (*b*)

A.—By first taking stock, then preparing the profit and loss account and striking a balance, and the difference between the two sides will give the net profit or loss. (See this fully shown, *ante*, p. 56.)

Q.—Give the proper heads of the books and the entries therein to record correctly the following transactions, employing such quantities, prices, dates, &c., as you find convenient:—

(*a.*) A. receives a bill of lading for goods consigned to him by B., and two bills of exchange drawn against the same in favour of C. He accepts the bills, clears the goods, and removes them to his warehouse;

(*b.*) He discounts one of the bills, pays the other at maturity;

(*c.*) He sells part of the goods for prompt payment, part are paid for by bills, and part remains on his hands;

(*d.*) He buys goods for B., pays for and transmits them;

(*e.*) He makes up his books, balances them, ascertains his profit, and renders an account to B., charges commission on the sales and purchases and warehouse rent.(*b*)

A.—The answer to this question may be gathered from the chapter on Book-keeping, *ante*, p. 50, *et seq.*, and from preceding answers.

(*a*) Four. (*b*) Twice.

APPENDIX.

GLOSSARY OF TECHNICAL LAW PHRASES.

A.

ABATEMENT. The act of abating, *i.e.*, beating down or destroying, putting an end to. The principal instances in which the word is used are the following:— 1. Abatement of freehold. 2. Abatement of nuisances. 3. Abatement of legacies. 4. Plea in abatement. 5. Abatement by the death of parties in a suit, &c.

ABDUCTION. The taking away of any one. Thus the taking away a child from its parents against their will, either by fraud, persuasion, or open violence, are all denominated abduction.

ABSQUE IMPETITIONE VASTI. Without impeachment of waste.

ACCEDAS AD CURIAM. A writ which lies for a man when he has received a false judgment in a hundred court or court baron.

ACCESSARY, is a person guilty of a felonious offence, not by being the actor or actual perpetrator of the crime, nor by being present at its performance, but by being in some way concerned therein either before or after its commission. If *before* its commission, he is termed an *accessary before the fact*, if *after*, *an accessary after the fact.*

ACCOMMODATION (Bill of Exchange). Such a bill is where it is accepted without any value having been received by the acceptor, for the purpose of raising money thereon by discount. It is called an *accommodation bill*, because it is accepted expressly for the purpose of accommodating the drawer or some other party, and upon the understanding that the acceptor is to be relieved from all liability incurred by having given his acceptance.

ACCORD. A satisfaction agreed upon between two parties when one is injured, and which is to be the recompense for the injury.

ACCOUNT STATED, is a balanced account; an account which is no longer open or current, but which has been closed or wound up between the parties.

ACTION, is defined by the *Mirror* to be "the lawful demand of one's right." It is also stated to be the *jus persequendi in judicio quod sibi debetur.* It is, however, the formal means prescribed by law for the recovery of our rights, and the redress of civil injuries.

ADEMPTION OF A LEGACY, signifies the taking away of a legacy. Thus, if a father having bequeathed a legacy of 100*l.* to a child, then gives the child 100*l.* *inter vivos*, the gift adeems the legacy.

AD VALOREM DUTIES, are duties the amount of which is regulated *according to the value* of the property upon which, or in relation to which, the duties are imposed. They now especially refer to the duties imposed upon conveyances, leases, &c.

ADVOWSON. The right of presentation to a church or benefice. They are of two kinds—*appendant* and in *gross*. They are also either *presentative*, *collative*, or *donative*.

ALIBI. This word signifies that mode of defence in a criminal prosecution which the accused party resorts to in order to prove that he could not have committed the crime with which he is charged, because he was in a different place at the time.

ALIEN. An alien is a person born in a foreign country, out of the allegiance to the Queen. *To alien* lands, &c., is to convey or transfer them.

ALIMONY. That allowance which is made to a woman for her support out of her husband's estate, when she is under the necessity of living apart from him.

ALLOCATUR. The Master's certificate of the sum allowed after taxing an attorney's bill is so termed.

ALLODIUM. Free from any rent or service. The tenure by which lands were held before the Norman Conquest.

AMICUS CURIÆ. "A friend of the court." When a judge is doubtful or mistaken in point of law a stander-by may inform the court thereof as *amicus curiæ*. The counsel in court frequently act in this capacity when they happen to be in possession of a case which the judge has not seen, or does not at the moment remember.

AMY (AMICUS). "A friend." Thus, infants are said to sue by *prochein amy*, that is, by their next friend.

APPENDANT. Annexed or appended to. As where an advowson or right of common is *appendant* to a manor.

APPRENDRE. A profit apprendre means a fee or profit to be taken.

APPROVE. To improve. To approve a common, means to inclose and improve it.

APPROVER. Generally used to denote that a person who is indicted for treason or felony has made a confession before plea, and accuses his accomplices in the same crime to obtain a pardon.

APPURTENANCES. Where a conveyance is made of a house "with the appurtenances," the garden, curtilage, and close adjoining to the house, and on which it is built, will pass with it, being included in the word *appurtenances*.

ARBITRATION, is the submitting of matters in dispute to the judgment of some person or persons called arbitrators.

ARBITRATOR. See tit. "Arbitration."

ARRAIGN. To arraign a prisoner is to call him to the bar of the court to answer the matter charged against him in an indictment.

ARREST OF JUDGMENT, is the withholding or staying of judgment notwithstanding a verdict has been given for the defendant. This motion is made for defects of substance appearing on the face of the record not amendable or cured by the verdict. But see hereon 15 & 16 Vict. c. 76.

ARSON, is the crime of wilfully and maliciously burning the house or outhouse of another person.

ASPORTATION. The carrying away of goods.

ASSETS. Property of a saleable nature in the hands of the executor or administrator, sufficient or *enough* to make him chargeable to a creditor or legatee so far as that property will extend. Assets are divided into personal assets and assets by *descent* or *real*, the latter being lands and tenements.

ASSIZE. See *ante*, p. 27.

ASSUMPSIT. This word is ordinarily used in two senses; first, to signify a promise; secondly, an action to recover damages for the breach of a promise.

ATTACH. To attach means to take or apprehend by command of a judicial writ termed an attachment. It is the mode of punishment usually resorted to in cases of contempt of court.

ATTACHMENT. See tit. "Attach."

ATTAINDER. The taint, stain, or corruption of blood which the law attaches to a criminal who is capitally condemned for treason.

ATTORNMENT. The acknowledgment by a tenant of a new lord, on the alienation of lands by the former lord. It is of feudal origin and is now abolished, with the exception perhaps in the case of a mortgage.

AUDITA QUERELA. A writ which lies for a defendant against whom judgment has been given, and who is, therefore, in danger of execution, or perhaps actually in execution, and who has some good matter of discharge, either on legal or equitable grounds which have happened since the judgment, and, therefore, he applies to the court to be relieved against the oppression of the plaintiff. But this proceeding has fallen into disuse, as the relief obtained by it may now be obtained summarily on motion.

AUTRE DROIT. "Another's right." When a person holds an estate not in his own right, but in the right of *another*, he is said to hold it in *autre droit;* as, where a term of years goes to an executor or administrator, he holds it in *autre droit.*

AUTRE VIE. "The life of another." As, where a person holds an estate for the life of another, he has an estate *per autre vie.*

AVOWRY. When a distress has been replevied, and the distrainor pleads that the goods were taken in his own right, such a plea is called an *avowry.*

AWARD. The judgment or decision of one or more arbitrators.

B.

BAIL (BALLIUM). The setting at liberty of a person who is arrested in any action, civil or criminal, on his finding sureties for his reappearance. The word, however, is generally used to denote the sureties themselves, rather than the setting the defendant at liberty.

BAILMENT. A delivery of goods in trust upon an express or implied contract that the trust shall be faithfully performed on the part of the *bailee* (the person to whom the goods are delivered), as, if cloth be delivered (or *bailed*) to a tailor to make a suit of clothes, he takes it on an implied contract to render it again when made.

BANC OR BANCO. See *ante*, p. 27.

BARRATRY, signifies any act by the master or mariners of a ship of a fraudulent nature, and tending to the prejudice of the owners of the ship, without their consent or privity, as, by deserting or sinking the ship, or embezzling the cargo.

BASE FEE. A base or qualified fee is one that has some qualification subjoined thereto, and which must cease or be determined whenever such qualification is at an end; as, if lands be granted to A. and his heirs *tenants of the manor* of Dale; for whenever A., or his heirs, cease to be tenants of the manor of Dale the grant is defeated.

BASTARD. A person born out of wedlock. Such an one is not entitled either to his father or mother's name.

BENEFICE. An ecclesiastical living, or any church preferment. It must be given for life, not for years or at will.

BOCKLAND, was one of the titles by which the English Saxons held their lands, and being always in writing was hence called *bockland*, which signifies *terram codicillarium* or *librarium*, deed land or charter land. It was the same as *allodium.* This species of inheritance was usually possessed by the *Thanes* or nobles.

BOND, POST OBIT. A bond, the terms of which are to be performed *after the death* of a person therein named.

BOOKLAND. See tit. "Bockland."

BOTTOMRY, is in the nature of a mortgage of a ship, when the owner borrows money to enable him to carry on his voyage, and pledges the keel or *bottom* of the vessel as a security for the repayment; in which case it is understood that if the ship be lost the lender loses his money, and for this reason he was permitted to receive more than the legal rate of interest before the repeal of the usury laws.

BURGLARY, is the breaking and entering into a house or dwelling of another in the night with the intention of committing a felony,

C.

CAPIAS. "You take." The writ used to arrest a defendant on mesne process. See hereon 1 & 2 Vict. c. 110.

CAPIAS AD SATISFACIENDUM. "You take to satisfy." The writ of execution after judgment, empowering the officer to take and detain the body of the defendant until satisfaction be made to the plaintiff.

CAPIAS UTLAGATUM. "You take the outlaw." A writ that is used for the purpose of arresting a man who has been outlawed.

CAPUT LUPINUM. "The head of a wolf." An outlaw was formerly thought to have caput lupinum, and might, like that animal, be destroyed by anyone.

CAVEAT EMPTOR. "Let the buyer beware." A maxim of law applicable to the sale of goods and chattels, and sometimes to land.

CEPI CORPUS. "I have taken the body." When a defendant has been arrested under this writ by the sheriff, and has him in custody, he makes this return to the writ.

CERTIORARI. "To be made more certain." A writ issuing to order the record of a cause to be brought before a superior court.

CESTUI QUE TRUST (OR USE). He for whose benefit lands or tenements are held. The beneficial owner.

CESTUI QUE VIE. He for whose life lands or tenements are granted. As, if A. grants lands to B, for the life of C., here C. is the *cestui que vie.*

CHAMPARTY, OR CHAMPERTY. Maintaining a litigation in order to share in the benefit of the verdict or judgment.

CHAPELRY, is the same thing to a chapel as a parish is to a church, *i.e.*, the precincts and limits of it.

CHARTER-PARTY. The instrument of freightage, or articles of agreement, for the hire of a vessel.

CHATTEL INTEREST, is an interest or estate in chattels or goods, or in lands not amounting to a freehold.

CHIROGRAPH. A counterpart. As the chirograph of a fine.

CHOSE. "A thing." *Chose in action* is sometimes used to signify the right of bringing an action, and sometimes the thing itself which forms the subject of that right; but it more properly includes both.

CIRCUIT PAPER. A paper containing a statement of the times and places where the several assizes will be held.

CITATION. See *ante*, p. 47.

CLAUSUM FREGIT. "He broke the close." Every unwarrantable entry on another's soil the law entitles a trespass by *breaking his close.*

CODICIL. A supplement or addition to a will made by the testator which adds to, alters or explains the will.

COGNOVIT ACTIONEM. An instrument signed by the defendant in an action, confessing the plaintiff's right of action, and empowering him to sign judgment against the defendant in default of the defendant paying him the amount due within the time stipulated in the cognovit.

COMMISSIONS OF ASSIZE, are commissions or authorities empowering the judges to sit on the circuit for the purpose of holding the assizes.

COMMISSIONS OF LUNACY, are commissions issuing out of Chancery authorising certain persons to inquire whether a person represented to be a lunatic is one or not, and if so, that the Queen may have the care of his estate.

COMMITMENT. The sending or committing a person who has been guilty of a crime, to prison or gaol by warrant or order.

COMMON, OR RIGHT OF COMMON. A profit which a man has in the land of another, as, to feed his beast, catch fish, dig turf, or cut wood, called respectively common of pasture, common of piscary, common of turbary, common of estovers.

COMMON BENCH. The Court of Common Pleas is sometimes termed the Court of Common Bench.

COMMON LAW, termed the *lex non scripta*, is used in various senses; sometimes as contra-distinguished from the statute law, sometimes from the civil and canon laws, and especially from equity. See further, *ante*, p. 25.

COMPTROLLER. An officer who has the inspection, examination, or controlling of the accounts of collectors of public money.

CONDONATION. The *forgiving* by a husband or wife of the other's adultery, &c.

CONFESSION AND AVOIDANCE. Pleadings in *confession* and *avoidance* are those which admit or *confess* the last pleading of the adversary to be true, but allege some new matter altering the legal effect of it, and show that the party thus pleading is nevertheless entitled to the judgment of the court.

CONSANGUINITY. Relationship by blood.

CONTEMPT. Contempt of court signifies a disobedience to the rules, orders, or process of the court, and is punishable by attachment.

CONTRACTU. Actions *ex contractu* are actions founded on a *contract* express or implied.

COPARCENARY. When lands of inheritance descend to two or more females, it is termed an estate in coparcenary.

COPYHOLDS. Copyhold lands are lands held by copy of court roll, at the will of the lord, and according to the custom of the manor of which they form parcel.

COUNT. In common law pleading a section of a declaration is so called. It is taken from the French word *conte*, signifying a narrative.

COVENANT. A covenant is a kind of promise contained in a deed, to do a direct act or to omit one; and is a species of express contract, the violation or breach of which is a civil injury. The person who makes the covenant is termed the *covenantor*, and he with whom it is made the *covenantee*.

CRIME. The distinction between a *crime* and a civil injury is, that the former is a breach and violation of civil rights which belong to individuals, considered in reference to their effect on the community in its aggregate capacity; while the latter is an infringement of the same rights considered simply as individuals.

CROWN OFFICE, is an office of the Court of Queen's Bench, the officer of which is usually styled the Clerk of the Crown. In this office the Attorney-General and clerk of the Crown exhibit informations for crimes and misdemeanors, the one *ex officio*, the other commonly by order of the court.

CROWN PAPER, is a paper containing the list of criminal and magisterial cases which await the hearing or decision of the Court of Queen's Bench.

CUM TESTAMENTO ANNEXO. "With the will annexed." When a testator has not named any executor of his will (or to the like effect) administration *cum testamento annexo* is granted.

CUMULATIVE LEGACY. Where two legacies are given to one person by the same will, it frequently becomes a question whether one is merely in substitution for the other, or whether the testator intended the legatee to take both, in which latter case the legacies are said to be cumulative.

CURIA ADVISARE VULT. "The Court wishes to advise." Abridged thus: Cur adv. vult. When the court takes time to consider its judgment, it is signified by the above words.

CUSTOM, is a law not written but established by long usage and the consent of our ancestors. Customs are either *general* or *particular*.

CUSTOS ROTULORUM. An officer to whom the custody of the records or rolls of the sessions are committed; he is always a justice of the *quorum*, and has the power of nominating the clerk of the peace, which office he cannot sell for money.

CY PRES. "As near as," or "Approximation." This doctrine is applied where a testator has made bequests which cannot be literally carried out, but the court do so *as near as* they can according to his intention.

D.

DAMAGE FEASANT. "Doing damage." When a man finds another's beasts wandering in his lands damage feasant, he may distrain them.

DAMNUM ABSQUE INJURIA. "Damage without an injury." Damage for which no action will lie.

DE BENE ESSE. In law signifies *conditionally.*

DE BONIS NON administration. Where an executor or administrator, not having fully administered his testator's or intestate's goods, dies without leaving any executor, this species of administration must be granted to the original testator's or intestate's goods.

DECLARATION, in an action at law is the plaintiff's statement of his cause of action, wherein he declares the reason of his complaint, and states the nature and quality of his case.

DECLARE. See tit. "Declaration."

DECREE. The judgment of a court of equity. Decrees are either interlocutory or final.

DE FACTO. A thing done *de facto* signifies a thing actually done.

DEFEASANCE. A collateral deed made at the same time with some other principal deed or instrument, and containing certain conditions, upon the performance of which the intention of the principal deed may be defeated or rendered null and void.

DEFORCEMENT, is the wrongful holding of any lands or tenements to which another has a right, but who has never yet had possession under that right.

DEFORCER. See tit. "Deforcement."

DEL CREDERE, is taken from an Italian mercantile phrase, signifying guarantee. When a factor sells goods on a *del credere* commission, he, for an additional premium beyond that which is usual, warrants the solvency of his buyers, when he sells the goods on credit.

DEMURRAGE. In charter-parties a certain time is allowed for the freighter to load or unload his vessel; and if he does not do this within the time specified, he has to pay a certain sum per day for every day beyond that time, which extra time and payment are called *demurrage.*

DEMURRER. A demurrer at law is a pleading denying the sufficiency in *point of law* of the adversary's last pleading, and raises an issue of law which is argued before and decided by the court sitting in *banc.*

A demurrer *in equity* is a mode of defence or pleading taken by a defendant when there is an objection to the plaintiff's bill appearing on the face of it.

DETINUE. An action of detinue is brought to recover specific goods which are *detained,* or their value, at the option of the plaintiff.

DEVASTAVIT. A devastavit is, strictly speaking, a return made by the sheriff to a writ of execution against an executor or administrator, signifying that he has wasted the goods of his testator, or intestate, as the case may be.

DE VENTRE INSPICIENDO. "Of inspecting the belly." A writ *de ventre inspiciendo* is a writ which lies for an heir *presumptive* when the widow feigns herself with child, to see whether she be with child or not, and if she be pregnant to keep her under proper restraint till she give birth to the child. This is done so that the widow may not produce a fictitious heir.

DISABILITY, is synonymous with incapacity. The most ordinary cases of disability are where the party is an infant, a *feme covert,* or *non compos mentis.*

DISCOVERT. An unmarried woman or widow, or one not within the bonds of matrimony.

DISFRANCHISE. To take away from or divest certain places or persons of any privilege or liberty.

DISSEISIN. When one man invades the possession of another, and by force or surprise turns him out of the occupation of the lands, this is termed a *disseisin.*

DIVORCE. The separation of husband and wife by force of law. See hereon the stat. 21 & 22 Vict. c. 85, and *ante*, p. 45, *et seq.*

DOMESDAY-BOOK, is a book compiled in the time of William the Conqueror, consisting of two volumes, and contains the details of a great survey of the kingdom. It was begun in the year 1081, and was completed in 1086. If a question arises whether or not lands are of ancient demesne, it is decided by this book.

DOMICILE, is the fixed and permanent residence of a person in a country not his own.

DONATIO MORTIS CAUSA. A gift made by one who is in immediate prospect of death.

DOWER, is an estate for life which the law gives the widow (married before the 1st of January, 1834) in a third part of all the lands and tenements of which her husband was seised in fee-simple or fee-tail in possession, at any time during the coverture, and of which any issue which she might have had might by possibility have inherited.

DUCES TECUM. "Bring with thee." A witness required to produce a deed or other document at the trial of any cause is served with a *subpœna duces tecum.*

DURANTE MINORE ÆTATE. An administration granted to some person during the minority of some other person who would otherwise be the administrator.

DURESS. If a man do any act however solemn, under fear or threat of death or mayhem, in case of non-compliance, he may afterwards avoid it; and the same is a sufficient excuse for the commission of many misdemeanors.

E.

EIGNE. The first-born or eldest.

ELECTION, is the choosing between two rights by a person who derives one of them under an instrument in which a clear intention appears that he shall not enjoy both. As, if A. by his will bequeath B.'s property to C., and give a legacy to B., B. cannot claim the legacy and also retain his property, but will be put to his election.

ELEGIT. "He has chosen." A writ of execution directed to the sheriff empowering him to seize the goods and chattels, and if there be not enough, the lands and tenements, for debt or damages due on a judgment.

ELISORS. If the sheriff who should return the jury or execute process, is in any way interested, this duty falls upon the coroner, and if he be interested also then the process is executed by two persons named by the court, and sworn, and these two are called elisors, or electors.

EMBEZZLEMENT, is a crime distinguished from larceny properly so called, as being committed in respect of property which is not at the time in the actual legal possession of the owner.

EMBLEMENTS, are various vegetables, which though affixed to the soil, are deemed personal property, and on the death of the intestate go to the administrator and not to the heir. Those vegetables only which are raised annually by labour and manurance (which are considerations of a personal nature) are called emblements.

EN AUTRE DROIT. "In the right of another." As, where an executor sues for his testator's debts, he sues in the right of another.

ENFEOFF. To enfeoff means to convey an estate of freehold by deed of *feoffment.*

ENFRANCHISEMENT. Generally applied to copyhold lands, which means changing them into freeholds.

ENTAIL. To entail lands means to limit the descent thereof to *lineal* heirs.

EQUITY OF REDEMPTION, is the right which *equity* gives to a mortgagor of *redeeming* his mortgaged estate after the time for repayment of the sum borrowed has gone by at law.

ESCHEAT. The resulting back to the original grantor or lord, of lands held in fee simple, for want of heirs, or corruption of blood of the tenant.

ESCROW. A scroll or writing. Where a deed is delivered conditionally it is so termed, and is not to take effect as a deed till the condition is performed, when it becomes a good deed.

ESCUAGE. The ancient tenure of Knight's service was commuted into a money payment called scrutage or *escuage*.

ESTATE. The word *estate* is generally used to denote the interest a man may have in lands or in any other subject of property. An estate in lands and tenements may be considered, first, in reference to the nature of the ownership; secondly, in reference to the quality of interest of which the estate is composed.

ESTOPPEL. Where a man is precluded from alleging or denying a fact in consequence of his own previous act, allegation or denial to the contrary, it is termed an estoppel.

ESTOVERS. Every tenant for life, unless restrained by covenant or agreement, may of common right take upon the land demised to him reasonable *estovers* or *botes*, *i.e.*, an allowance of wood for fuel, repairs, and the like.

ESTREATED. When recognisances are forfeited they are said to be estreated.

EX CONTRACTU. Actions *ex contractu* are those which are founded upon a contract, express or implied.

EX DELICTO. Actions *ex delicto* are such as are founded on some wrong or injury committed against the person or property of a man, as distinguished from such as are founded on the breach of a contract.

EXECUTOR DE SON TORT. One who takes upon himself the duties of an executor without any authority, is so termed.

EXEMPLIFICATION, signifies in law a transcript or copy; thus an exemplification of a recovery means a transcript of the recovery roll.

EXIGENT, OR EXIGI FACIAS. A writ which is made use of in the process of outlawry.

EX OFFICIO. By virtue of office.

EX PARTE. Of one part; partly.

EX POST FACTO. From an after fact; after a deed is done.

EXTENT. A writ issued out of the Court of Exchequer to recover debts due, directly or indirectly, to the Crown.

EXTRAJUDICIAL. An extrajudicial act is any act done by a judge beyond his proper and legitimate authority.

EXTRAPAROCHIAL. Out of the bounds or limits of a parish.

F.

FALSIFY. To prove a thing to be false.

FEE. Spelman defines a *fee* to be "the right which the vassal or tenant hath in lands to use the same and take the profits thereof to him *and his heirs*, rendering to the lord his due services for the same." The word is now used in connection with the word *estate*; an estate *in fee simple*, or shortly, in fee, which is an estate to a man and his heirs absolutely.

FEE-FARM, signifies that lands are held of another in *fee*, in consideration of such rent as the premises are reasonably worth (not less, however, than the fourth of its value), and without homage, fealty, or any other services than are specified and set forth in the deed of feoffment whereby the estate was created. This rent reserved is called a *fee-farm rent*.

FEIGNED ISSUE. A fictitious issue. A feigned issue is a means adopted of trying disputed questions of fact under the Interpleader Act, or when any question of fact arises in a suit in Chancery, &c. It may be either in the old form of a wager, or in the form given by the stat. 8 & 9 Vict. c. 109.

FELO-DE-SE, is a self-murderer; a felon of himself.

FELONY. Felony, in the general acceptation of the English law, comprises every species of crime which occasioned at common law a forfeiture of lands and goods.

FEME COVERT. A married woman.

FEME SOLE. An unmarried or single woman

FEOD, FEUD, FIEF, OR FEE. A tract of land acquired by the voluntary and gratuitous donation of a superior, and held on condition of fidelity and certain services which were in general of a military nature. The donee of the land took the oath of fealty (*juramentum fidelitatis*); and on breach of the conditions and oath the land reverted back to the donor or his heirs.

FEODAL, OR FEUDAL. Relating or belonging to a feod or fee.

FEOFFMENT. A feoffment is the gift or grant of honours, castles, manors, messuages, lands, houses, or other corporeal hereditaments to another in fee simple, accompanied by a formal delivery up of possession, called livery of seisin. "It is," says Coke, "properly a conveyance in fee, yet it is improperly called a feoffment when only an estate of freehold passes."

FERÆ NATURÆ. "Of a wild nature." Animals *ferœ naturœ* are not subjects of property, such as foxes, wild fowl, &c.

FIAT. "Let it be done." A short order or warrant of a judge commanding or permitting something to be done.

FICTIO JURIS. A fiction of law.

FIDUCIARY ESTATE. An estate which is held in trust.

FIERI FACIAS. "Cause it to be done." A writ of execution directed to the sheriff commanding him to levy of the goods of the defendant the sum due, &c.

FINE. A fine was one of the ancient modes of barring entails and dower, &c. In its nature it was a fictitious action between the demandant and tenant, and compromised by leave of the court, and thus called a fine, because it puts an *end* to the suit or controversy.

FLOTSAM, is a word signifying any goods that are lost by shipwreck, and lie *floating* or swimming on the top of the water, and which the Lord Admiral is entitled to by virtue of his letters patent.

FOLK-LAND. The land of the common *folk*, held by no assurance in writing, but distributed amongst the common folk or people at the pleasure of the lord, and taken back at his will and discretion, being a species of *villeinage*, and neither strictly feodal, Norman, nor Saxon in its tenure, but compound of them all, the tenants being called villeins. We are said to derive our *copyholds* from this species of tenure.

FORECLOSURE. Foreclosure of the equity of redemption is barring the mortgagor's right to redeem his mortgaged estate.

FORMÂ PAUPERIS. "In the form of a pauper." A person is allowed to sue *in formâ pauperis*, on counsel certifying that he has a good cause of action, and on his making an affidavit that he is not worth 5*l.*, his wearing apparel and the subject-matter of the suit excepted.

FRANCHISE. A privilege or exemption from ordinary jurisdiction.

FRANKALMOIGN. Tenure in frankalmoign is that by which a religious corporation, aggregate, or sole, holds lands of the donor, to them and their successors for ever, upon consideration of praying for the souls of the donor and his heirs in time or eternity, or the like.

FRANK MARRIAGE. Where lands are given to a man and his wife, who is the daughter or cousin of the donor, to hold to them and the heirs of their bodies, they are tenants in special tail; and the lands are said to be held in *frank marriage*.

FREEBENCH, is that estate in copyhold lands that a wife has after the death of her husband for her dower, according to the custom of the manor in which the lands form parcel.

FREEHOLD, is used to denote that a man has an estate for life at least in lands of free tenure.

G.

GARNISHEE. The party in whose hands money is attached. See hereon 17 & 18 Vict. c. 125.

GAVELKIND. By the custom of *gavelkind*, which chiefly prevails in the county of Kent, lands descend to all the sons together. The tenant may convey his interest in the land at the age of fifteen years by feoffment.

GIST. Gist of an action means the very foundation of it, the ground which maintains it.

GRAND SERJEANTY. See tit. "Serjeanty."

GROSS. Separate, independent, not annexed or appendant.

GYET. See tit. "Gist."

H.

HABEAS CORPUS. A writ of right for those who are aggrieved by illegal imprisonment. See hereon the 31 Car. 2, c. 2, commonly called the Habeas Corpus Act, and the 54 Geo. 3, c. 100.

HABENDUM, is one of the formal parts of a deed; it is so called because it begins with the words *to have*.

HEIR. The person to whom the *real estate* of the ancestor descends in case the ancestor dies intestate.

HEIR APPARENT, is one who, should he outlive the ancestor, will be heir at all events, if the ancestor dies intestate, as, the eldest son.

HEIR PRESUMPTIVE, is one who, were the ancestor to die intestate immediately, would be his heir, but whose hopes may be cut off by the birth of a nearer heir; as, the hopes of a daughter by the birth of a son.

HEIRLOOMS. Such inanimate personal chattels as go to the heir along with the inheritance, and not to the executor of the deceased.

HEREDITAMENTS, is a word of the most comprehensive signification that can be used in deeds, it signifying *anything* that can be *inherited*. Hereditaments are of two kinds, *corporeal* and *incorporeal*, the former being such as are of a tangible and substantial nature, and are objects of the senses, such as lands and tenements; the latter being rights issuing out of or annexed to, or exercisable with, things corporeal, as rents and the like.

HERIOT. The best beast, which by the custom of some manors is due to the lord upon the death of the copyhold tenant.

HOMICIDE, is the killing of any human creature. It is divided into *justifiable*, *excusable*, and *felonious*.

HOTCHPOT. A blending or mixing together. As, when a person dies intestate, leaving several children, one of whom he has advanced in his lifetime, that one shall take no share in the distribution of the personal estate of the intestate, unless he will bring the amount advanced to him into hotchpot.

HOUSEBOTE, is necessary wood which a lessee for life or years has a right to take off the lands let to him, for the purpose of repairing the house, &c., upon the lands so let.

HUNDREDORS. Persons empanelled or fit to be empanelled on a jury upon a controversy arising within the hundred where the land in question lies.

I.

IGNORE. To be ignorant of. This word is indorsed on a bill of indictment by a grand jury when they reject it.

IMPEACHMENT OF WASTE is a term used to show that the tenant has not the power to commit waste upon the lands granted to him. See further, tit. "Waste."

IMPOUND. To impound is to place cattle, goods, or chattels taken under a distress in a lawful pound.

IMPROPRIATION. A benefice in the hands of a lay person.

INDEBITATUS ASSUMPSIT, is that species of the action of *assumpsit* in which the plaintiff first *alleges a debt*, and then an implied *promise* in consideration of the debt.

INDENTURE. Deeds or writings which are cut or *indented* at the top are called *indentures*. See hereon 8 & 9 Vict. c. 106.

INDICTMENT. An indictment is a written accusation of one or more persons of a crime or misdemeanor, preferred to and presented upon oath by a grand jury.

IN ESSE. In being; in existence.

IN FORMÂ PAUPERIS. In the form of a pauper. See tit. "Formâ Pauperis."

INJUNCTION. An injunction is a prohibitory writ granted by courts of equity and law against one or more parties to a suit or action, forbidding certain acts to be done.

INSOLVENT. A person is said to be insolvent where his debts exceed his assets.

INTERESSE TERMINI. An interest in the term. It is that interest which a lessee for years has in the lands demised to him before he has actually become possessed of them by entry, upon which event he has an estate for years.

INTESTATE. A person is said to die *intestate* who dies without having made a will.

INTRUSION, is a species of injury by ouster or a motion of possession from the freehold by a stranger entering upon the lands after a particular estate of freehold is determined, before the remainder-man or reversioner.

IN VENTRE SA MERE. In the mother's womb.

IPSO FACTO. From the deed, or by the fact itself.

ISSUABLE TERMS. Hilary and Trinity Terms are so called, because these being the terms which immediately precede the assizes the issues for trial are then made up.

ISSUE, is the disputed point or question to which the parties in an action have narrowed their several allegations, and upon which they are desirous of obtaining the opinion of a jury.

J.

JOINT TENANTS, are those who hold the same lands by the same title (not being a title by descent), accruing at the same time, and there are no words importing that they are to take in distinct shares. They have a unity of possession, interest, title and time in the commencement of that title.

JOINTURE. A settlement of lands or tenements made to a woman on her marriage, for the life of the wife at least.

JUDGMENT, is the sentence of the law pronounced by the Court upon the matter appearing from the previous proceedings in the suit. Judgments are either interlocutory or final.

JURAT, is the clause written at the foot of an affidavit, stating when, where, and before whom such affidavit was sworn.

JUS AD REM. The imperfect right to a thing in contradistinction to *jus in re*, which signifies the complete and perfect right in the thing.

K.

KING'S (OR QUEEN'S) BENCH. See *ante*, p. 26.

KNIGHT'S SERVICE. One of the ancient feudal tenures now abolished.

L.

LACHES, signifies slowness or negligence in seeking redress.

LARCENY, is the unlawful taking and carrying away of things personal, with intent to deprive the right owner of the same, and is either simple or accompanied with circumstances of aggravation.

LEVANT AND COUCHANT. Rising up and lying down. The words are used in reference to distress damage feasant. If a person is bound to keep fences in repair and does not, and cattle thereby stray into his lands, he cannot distrain them damage feasant till they have been levant and couchant, which is held to be one night at least.

LEX TERRÆ. The law and custom of the land, distinguished by this name from *lex civilis.*

LIBEL, is the malicious defamation of any person expressed by writing, print, figures signs, pictures, or other symbols.

LIEN, is a qualified right or property which a person has in or to a thing arising from such person having a claim upon the owner of the thing.

LIQUIDATED DAMAGES, are damages the amount of which is fixed and ascertained.

LIS PENDENS. A pending suit or action.

LIVERY OF SEISIN. Delivery of possession. See tit. "Feoffment."

M.

MAGNA CHARTA. The great charter of English liberties granted by King John, and confirmed by Henry III.

MALA IN SE. Bad in itself.

MALFEASANCE, is the commission of some act which is unlawful.

MANDAMUS. A writ which issues out of the Court of Queen's Bench commanding the completion or restitution of some right.

MANSLAUGHTER, is the unlawful and felonious killing of another *without malice*, either express or implied, and may be either *voluntary*, as, where one kills another in a sudden quarrel, or *involuntary*, as, where one doing an unlawful, though not felonious act, accidentally kills another.

MARKET OVERT. "Open market." Selling goods in market overt means selling them in an open market as opposed to selling them in private or a *covert* place.

MENSA ET THORO. A divorce *à mensâ et thoro* means *from bed and board;* which is now abolished, and a judicial separation substituted.

MERGER. Where a greater and a less estate meet in the same person in the same right, without any intervening estate, the less is swallowed up or *merged* in the greater.

MESNE PROCESS, is an intermediate process, which issues pending the suit upon some collateral interlocutory matter.

MISDEMEANOR. See *ante*, p. 42.

MISFEASANCE, is the wrongful commission of some act which is lawful.

MITTIMUS. A writ by which records are transferred from one court to another.

MODUS OR MODUS DECIMANDI. When the general law of tithing is altered, and a new method of taking them is introduced, it is termed a *modus* or *modus decimandi.*

MORTGAGE. From *mort*, death, and *gage*, pledge. A mortgage is a conveyance of lands by one person to another as a security for a sum of money borrowed. The person who makes the conveyance is called the *mortgagor*, and the party lending the money the *mortgagee.*

MORTGAGEE. See tit. "Mortgage."

MORTGAGOR. See tit. "Mortgage."

MORTMAIN, from the word *mort*, death, and *main*, hand. All purchases made by corporate bodies are said to be purchased in mortmain.

MURDER, is the act of a person of sound mind and discretion unlawfully killing any human being with *malice aforethought*, either express or implied.

N.

NATURALISATION. The making a foreigner a lawful subject of the state, or, as it is sometimes termed, the king's natural subject.

NE EXEAT REGNO, is a writ which issues out of Chancery to restrain a person from leaving the kingdom, when another has an equitable demand against him.

NIHIL OR NIL DICIT. "He says nothing." Where the defendant does not put in a plea to the plaintiff's declaration, the plaintiff is entitled to have a judgment by *default* or nil dicit of the defendant.

NISI PRIUS. "Unless before." See further, *ante*, p. 27.

NISI PRIUS RECORD. See *ante*, p. 29.

NOLLE PROSEQUI. A nolle prosequi is in the nature of an acknowledgment or undertaking by the plaintiff in an action, not to follow up his action or part of it.

NONAGE. Under twenty-one years of age in some cases, and under twelve or fourteen in others.

NON ASSUMPSIT. "He hath not promised." The name of the plea which occurs in the action of *assumpsit*, by which the defendant denies that he undertook or promised to do the thing which the plaintiff in his declaration alleges that he did promise to do.

NON COMPOS MENTIS. Of unsound mind.

NON CONSTAT. "It does not appear." It is by no means clear or evident, &c.

NON EST FACTUM. "It is not his deed." A plea which occurs in an action of debt on bond or other specialty.

NON EST INVENTUS. "He is not found." This return is made by a sheriff when he cannot find the defendant.

NONFEASANCE. The omitting to do what ought to be done.

NONJOINDER. The not joining of any person or persons as a co-defendant or co-plaintiff. The nonjoinder of a party is taken advantage of by plea in abatement.

NON OBSTANTE VEREDICTO. "Notwithstanding the verdict." Where a defendant has obtained a verdict on a defective plea, but the plaintiff has nevertheless the judgment of the court, it is termed judgment *non obstante veredicto*.

NON PROS, OR NON PROSEQUITUR. "He does not prosecute or follow up." If the plaintiff does not properly follow up the proceedings in his action, the defendant may sign a judgment of *non pros*.

NONSUIT, is where the plaintiff finding that his evidence is not sufficient to obtain him a verdict, renounces or gives up the suit. A plaintiff cannot, however, be nonsuited against his will; he has the power to insist on the case going to the jury, and take his chance of a verdict.

NUDUM PACTUM. "A bare agreement." Where an agreement or contract contains no consideration it is termed *nudum pactum*, upon which no action will lie, unless it is under seal.

NUL TIEL RECORD. "No such record." A plea pleaded in a trial by record.

NUNC PRO TUNC. "Now for then." Where a party has omitted to do some act, as, to file an affidavit within the proper time, the court will sometimes allow it to be done afterwards, taking effect as if done at the proper time.

NUNCUPATIVE WILL. A will which depends upon mere oral evidence, and not by any writing. These wills are now void, except as to seamen dying at sea.

O.

OBLIGATION. An obligation or bond is a deed whereby a person obliges himself his heirs, executors, and administrators, to pay a certain sum of money, or to do some other act on a given day; he who so agrees to pay the money or do the act is termed the *obligor*, and the party at whose request it is done, or the party obliged is termed the *obligee*.

OBLIGOR. See tit. "Obligation."

OBLIGEE. See tit. "Obligation."

OFFENCE. An offence is either *capital*, which is punished with death, as, treason and murder; or not capital, not being punishable with death.

ONUS PROBANDI. The burden of proving.

OUSTED, signifies to be removed, or put out; thus, ouster of the freehold means being put out of possession of the freehold.

OUSTER LE MAIN. "To remove the hand." Before the military tenures, with the rights of guardianship annexed to them, were abolished, an infant when he or she arrived of age sued out his or her livery of *ouster le main*, in order to get their lands out of their guardians' hands.

OVERT. "Open." An overt act signifies an open or manifest act.

OYER AND TERMINER. "To hear and determine." A commission of oyer and terminer is one under the Queen's great seal, directed to certain persons, among whom two common law judges are usually appointed, empowering them to hear and determine treasons, felonies, robberies, murders, and criminal offences in general.

O, YES, is said to be a corruption of the word *oyez*, "hear ye."

P.

PAIS. Matter *in pais* signifies matter *of fact*.

PARAPHERNALIA, means something which the wife is entitled to over and above her dower. Under the term paraphernalia are included such apparel and ornaments of the wife as are suitable to her station in life.

PARCENARY, is the holding of lands jointly by *parceners* or *co-parceners*.

PAROL, signifies *verbal*, in contradistinction to that which is written.

PARTICULAR ESTATE. A particular estate is a limited legal interest in lands or tenements carved out of the absolute property or fee simple. As, if A. being seised in fee of lands grant them to B. for life, here B. has a particular estate, it being a *particle* or portion carved out of A.'s fee.

PENDENTE LITE. Pending the suit.

PER AUTRE VIE. For or during the life of another, for such a period as another person shall live.

PER CURIAM. By the court.

PERJURY. Lord Coke defines perjury to be a crime committed when a lawful oath is administered in some judicial proceeding to a person who swears wilfully, absolutely, and corruptly in a matter material to the issue or point in question.

PER MY ET PER TOUT. "By the half and by all." This phrase is applied to joint tenants, who are said to be seised *per my et per tout*.

PERPETUITY. The condition of an estate being rendered perpetually (or for a very long period of time) inalienable by the act of the proprietors.

PETTY SESSIONS, are the ordinary sittings of justices for the city or division of a county for the granting and hearing of summonses, issuing warrants, hearing criminal cases previous to their being sent to the assizes or quarter sessions, allowing poor and highway rates, &c.

PLEA, is generally used to denote a mode of defence taken by a defendant in an action or suit.

PLEADING ISSUABLY. See tit. "Issuable plea."

PLENE ADMINISTRAVIT. A plea pleaded by an executor or administrator in an action when he has fully administered.

POSSESSIO FRATRIS, means possession or seisin of the brother. It is a maxim that *possessio fratris facit sororem esse hæredem*, that is, that the possession or seisin of the brother will make his sister of the whole blood his heir in preference to a brother of the half-blood. But see now 3 & 4 Will. 4, c. 106.

POSTEA. The *postea* contains the substance of what took place at the trial of an action, and is entered on the record. It is called *postea* because it begins with the word "afterwards."

POUNDAGE. Sheriff's poundage is an allowance made to him of so much in the pound upon the amount levied under an execution.

PRÆMUNIRE, is a species of offence affecting the Queen (or King) and her government, though not subject to capital punishment.

PREBEND. The rents and profits belonging to a cathedral church.

PRENDER. The right or power of taking a thing before it is offered.

PRESCRIPTION, is a personal usage. A title which a person acquires to lands by long and continued possession is called a prescriptive title. It is now regulated by the stat. 2 & 3 Will. 4, c. 71.

PRESENTATION, is the act of presenting a clerk to the bishop by the patron.

PRIMER SEISIN. Before the military tenures were abolished, if any of the king's tenants *in capite* died seised of a knight's fee, he was entitled to receive of the heir, provided he was of full age, one whole year's profit of the lands if they were in possession, and half a year's profits if they were in reversion expectant on a life estate.

PRIMOGENITURE. The right of the eldest son to succeed to all lands of inheritance belonging to his father, in exclusion of the younger sons.

PROBATE. Probate of a will is a copy of the will on parchment, under the seal of the Court of Probate.

PROCEDENDO. Where a cause has been removed from an inferior to a superior court by *certiorari* or otherwise, and it is wished to send it back again to such inferior court, this is done by writ of *procedendo*.

PROCHEIN AMY. "Next friend." An infant sues by *prochein amy*, because of his legal inability to sue in his own right.

PRO CONFESSO. Taking a bill in Chancery *pro confesso* means that the court assumes the statements in the bill to be true, or *as confessed* by the defendant, and makes a decree accordingly.

PROTECTOR OF SETTLEMENT, is a functionary created by the stat. 3 & 4 Will. 4, c. 74, being entirely unknown before. But his office is in effect somewhat similar to that of the old tenant to the præcipe, operating in like manner as a check upon the too free alienation of settled estates.

PUIS DARREIN CONTINUANCE. "Since the last continuance." A plea which is pleaded when the cause of defence arose after action brought, and within eight days before the pleading thereof.

PUR AUTRE VIE. "For the life of another." An estate *pur autre vie*, is an estate which endures for the life of some other person.

PURCHASE, in its technical sense signifies that real property is acquired in any other manner than by descent.

PURVIEW. The purview of an act is that part which begins with the words, "Be it therefore enacted," &c.

Q.

QUANDO ACCIDERINT. "When they happen." Judgment of assets *quando acciderint* is sometimes signed against an executor, empowering the person signing it to seize assets when they come to the executor's hands.

QUANTUM MERUIT. "As much as he deserves." Where one person is employed by another to do work, the law implies that he is to be paid for it, which is termed his *quantum meruit*.

QUARE CLAUSUM FREGIT. "Wherefore he broke the close. Where there is a trespass to land, the action brought to recover damages for it is termed an action of *trespass quare clausum fregit*.

QUARE IMPEDIT. "Why he hinders." The action of *quare impedit* is the one brought to try a disputed title to an advowson.

QUASH. To make void, to annul.

QUE ESTATE. "Which or whose estate." A term used in pleading.

QUI TAM. Suing *qui tam*, is prosecuting a popular action for the purpose of recovering the penalty; so called because the prosecutor sues *as well* (*qui tam*) for the Crown as himself.

QUIA EMPTORES. "Because the purchaser." The stat. 18 Edw. 1, which prevents a further sub-infeudation of estates in fee-simple is so called.

QUID PRO QUO. "What for what." Used in law for giving one thing for another; a mutual consideration.

QUIT RENTS, are rents at which the freeholders and copyholders of a manor have held under the lord from time immemorial, and which cannot be varied. They are also called *rents of assize*.

QUO WARRANTO. A writ of *quo warranto* is one that lies for the Crown against any one who has usurped any office or liberty, to inquire by what authority he has done so.

QUOAD. "As to, concerning, &c." As, *quoad* the freehold, &c.—relating to or concerning the freehold.

QUO MINUS. A writ by which the Court of Exchequer gained its jurisdiction over purely civil actions. See further *ante*, p. 27.

QUORUM. "Of whom." Among the justices of the peace appointed by the king's commission there were some who were more eminent for their skill and discretion than others, one *of whom*, on particular occasions, the commission required should be present, and without him the others could not act; and these persons were thence termed justices of the *quorum*. But now the practice is to advance almost all to this dignity, naming them all over again in the *quorum* clause.

R.

RACK-RENT, is a rent of the full annual value of the property, or near it.

RAPE. This word has several meanings, but it is used generally to denote the ravishing or carnal knowledge of a woman against her will.

REALTY. That which relates to real property, *i.e.*, to lands and tenements.

RECOGNISANCE, is an acknowledgment upon record of debt *already due*.

RECORD. An authentic testimony in writing on rolls of parchment, and preserved in courts of record. As to the record of Nisi Prius, see *suprà*.

RECOVERY. A recovery was one of the ancient modes of barring estates tail and dower, and transferring the interest of married women in real property. In their nature they were fictitious suits brought by the intended purchaser, called the demandant, against the tenant for life, called the tenant to the præcipe, and carried on to judgment and execution.

REDDENDUM, is that part of a deed by which the grantor reserves something to himself for what he has before granted; as the reservation of the rent in a lease.

REDDITUS SICCUS. "A dry or barren rent." So called because before the stat. 4 Geo. 2, c. 28, no distress could have been made for it.

REDEMPTION. See tit. "Equity of Redemption."

REJOINING GRATIS, means rejoining without notice.

RELATOR, is generally used to signify an *informer*; as, when an information is filed by the Attorney-General at the *relation* of some informant.

REMAINDER. See *ante*, p. 27.

REMANET, signifies that which remains. Causes which remain from one sitting to another are so termed.

RENDER. "To give up, to yield." Thus rents are said to lie in *render*.

REPLEVIN. An action of replevin is one adopted to try the validity of a distress, or to recover the possession of goods unlawfully taken. It may now be commenced either in the County Court or one of the Superior Courts of common law.

REPRIEVE. To reprieve is to withdraw or suspend execution for a time, when a person has been sentenced to suffer death.

RETURNO HABENDO. A writ that lies for the distrainer of cattle or goods, &c., who, on replevin brought, has proved his distress good, against the person whose cattle or goods were distrained, to have them *returned to him*.

REVERSION. See *ante*, p. 38.

S.

SCIENTER, is a term used in pleading, to signify that part of the declaration which alleges the defendant's previous *knowledge* of a state of things which it was his duty to guard against, and which his omission to do has led to the injury complained of.

SCIRE FACIAS. "That you make known." A *scire facias* is a judicial writ founded upon some matter of record, and requiring the person against whom it is brought to show cause why the party bringing it should not have the advantage of such record, or (as in the case of *scire facias* to repeal letters patent) why the record should not be annulled and vacated. It is in law considered as an action. See hereon the stat. 15 & 16 Vict. c. 76.

SCUTAGE. See tit. "Escuage."

SED PER CURIAM. "But by the whole court."

SEISIN. Possession of a *freehold* estate.

SEMBLE. It seems; it appears, &c.

SEQUESTRATION. This word is used in various senses. When used at law it generally signifies an execution for debt against a clergyman or beneficed clerk. In Chancery it is used to denominate a part of the process of contempt; *i.e.*, a writ to take the party's personal estate and the profits of his real estate, in consequence of his refusal to obey the orders of the court.

SERJEANTY. A species of tenure by knight's service, due to the king only, and divided into *grand* and *petty* serjeanty, the former being to do some honorary service for the king, as, to carry his banner, his sword, or the like; the latter, to render the king some small implement of war, as, a lance, a sword, or the like.

SEVERAL TAIL. An entail *severally* to two, is when lands are given to two men, and their wives, and the heirs of their two bodies to be begotten; here the donees have a joint estate for their two lives, and yet they have a *several* inheritance, because on the death of either his issue takes his moiety.

SEVERALTY. An estate in severalty is where the tenant holds it without any one being joined or connected with him in point of interest during his estate therein.

SIMONY, is the corrupt presentation to a church or ecclesiastical benefice for money, gift, or reward. It is said to be termed *simony* from the resemblance it bears to the sin of Simon Magus.

SIMPLE CONTRACT, is one that is evidenced by oral testimony or by writing, *not* under seal.

SINE DIE. "Without day." When a proceeding is adjourned *sine die*, it is understood to be adjourned for an indefinite period.

SLANDER, is the malicious defamation of a man, either with respect to his character, trade, profession, or occupation, by word of mouth.

SOCAGE, in its most general and extensive signification, seems to denote a tenure by any certain and determinate service. It is of two sorts:—(1) *Free* socage, where the services are not only certain but honourable, which we now term freehold; and (2) *Villein* socage, where the services, though certain, are base, and from which tenure we are said to derive our copyholds.

SON ASSAULT DEMESNE, is a plea which is pleaded in an action of *trespass* and *trespass on the case*, by which the defendant alleges that it was the plaintiff's *own original assault* that occasioned the trespass for which he brings his action, and that what the defendant did was merely in his own defence.

SPECIAL SESSIONS, are extraordinary sessions of the justices in cities and divisions of counties for the granting of alehouse and beerhouse licenses, allowance of jury lists, &c.

SPECIAL PAPER, is a court paper containing a list of special cases and *demurrers* set down therein for argument before the court in *banc.*

SPECIFIC LEGACIES, are such as are specified or particularised by a testator in his will; as, the bequest of a *particular* diamond ring. Specific legacies only abate for payment of debts.

SPOLIATION, is an injury done by one clerk or incumbent to another in taking the fruits of his benefice, without any right to them, but under a pretended title.

STATUTE MERCHANT, is an instrument in the nature of a bond, introduced in the reign of Edward I., for the purpose of charging lands with the payment of debts contracted in trade. It empowers the seizing of the body and goods, and also the taking possession of the lands. It is called a Statute Merchant because it was entered into between *merchants*, and made by virtue of a *statute*. These securities have now, however, fallen into disuse.

STATUTE STAPLE, is a security for a debt acknowledged to be due before the mayor of the *staple*, *i.e.*, the mart for the sale of the principal commodities of the kingdom, formerly held by Act of Parliament in certain towns. Both the body, goods, and lands can be taken under it. It is so called because it is entered into before the mayor of the *staple*, and in the form provided by *statute*. These securities are also in disuse.

STIRPES. When next-of-kin take by *representation* they are said to take per stirpes.

STOPPAGE IN TRANSITU, is that right which the law gives the vendor of goods sold on credit *to stop them whilst on their way*, when the purchaser has become bankrupt.

SUBORNATION OF PERJURY, is defined to be the offence of procuring another to take such a false oath as would constitute perjury in the principal.

SUBTRACTION, is the offence of withdrawing from another what he, by law, is entitled to. There are various kinds of this offence: as, subtraction of suit and services, subtraction of titles, subtraction of legacies, &c.

SUFFERANCE. A tenant at sufferance is one who enters into possession of and holds lands and tenements by a lawful title, and continues in possession after that title is determined.

SURCHARGE, signifies an overcharge. As, to surcharge an account in equity.

T.

TACKING. This word is applied to mortgages, and is used as a means by which a subsequent mortgagee obtains priority over a prior mortgagee. Thus, if a third mortgagee has advanced his money on a mortgage without notice of a second, he may, by purchasing the first legal mortgage, tack his third mortgage to the first, and so postpone the immediate incumbrance.

TAIL, is derived from the French *tailler*, to cut. This word when used in connection with the word *estate* or *fee*, signifies an estate which is descendible to the lineal heirs only of the owner. It is a fee cut down, and is termed an estate in fee tail and the owner *tenant in tail*.

TALES. When by reason of challenge to the jurors or other causes a sufficient number of them do not appear to be sworn, either party may pray a *tales*, as it is termed; that is, a supply of such men as are summoned on the first panel, in order to make up the difference.

TENANT AT SUFFERANCE. See tit. "Sufferance,"

TENANT AT WILL. See tit. "Will, Estate at."

TENANT BY THE CURTESY. See tit. "Curtesy of England."

TENANT IN TAIL. See tit. "Tail."

TENANT IN TAIL after possibility of issue extinct. See *ante*, p. 18.

TENANT TO THE PRÆCIPE. See tit. "Recovery."

TENANTS IN COMMON, are such as hold the same lands, with interests accruing under different titles, or accruing under the same title (other than descent), but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares.

TENENDUM, is that part of a deed which is characterised by the words "to hold."

TENURE, from *tenere*, to hold. Tenure signifies the system of holding lands or tenements in subordination to some superior, and which, in the feudal ages, was the leading characteristic of real property, and which we still recognise.

TERRE TENANT, is he who is literally in the possession and occupation of the land.

TESTATOR, is the maker of a will or *testament*.

TESTE. A writ of summons is said to be tested in the name of the Lord Chief Justice or Lord Chief Baron, *i.e.*, it is *witnessed* in his name.

TORT. A wrong or injury.

TOTIES QUOTIES. As often as.

TRAVERSE. In the language of pleading signifies a denial.

TREASON, from the French *trahir*, to betray. See *ante*, p. 42.

TRESPASS, in its ordinary sense signifies an injury committed with *violence*, and the violence may be either *actual* or *implied;* and the law will imply violence though none is actually used, where the injury is of a *direct* or *immediate* kind, and committed on the person, or tangible and corporeal property of the plaintiff; as, where there is a peaceable but wrongful entry upon a person's land.

TRESPASS ON THE CASE, is the form of action adopted to recover damages for an injury which is not accompanied with *immediate* violence.

TROVER (from *trouver* to find), is a form of action adopted to try a disputed question in goods and chattels. It is called trover because it is founded upon the supposition (generally, however, a fiction) that the defendant *found* the goods, and then converted them to his own use.

TRUST. A trust when used in the sense of an interest is the equitable or beneficial interest or ownership of or in real or personal estate, existing apart from and collateral to the legal interest or ownership.

U.

USANCE, signifies the time which, by the *usage* of different countries between which bills of exchange are drawn, is appointed for their payment.

USE. A use as distinguished from a trust (see tit. "Trust") is that interest which the Statute of Uses (27 Hen. 8, c. 10) transfers into possession, thereby making the *cestui que use* complete owner of the lands as well at law as in equity. Before the Statute of Uses it had the same meaning as a trust.

USER, is the act of *using* or enjoying any profit or benefit to be taken from or upon land, or any easement to be enjoyed upon or over any land or water. This *user*, if continued sufficiently long, may give a *prescriptive* right to the profit or easement.

V.

VENUE, signifies the county in which an action is intended to be tried, and from which the body of the jurors are to be summoned. The venue is inserted in the margin of the declaration, and is termed "laying the venue" in that county.

VERDICT, is the unanimous opinion or decision of a jury, on the issue submitted to them. Verdicts are either *general* for the plaintiff or defendant, or *special*, stating all the facts of the case, and leaving it to the court to pronounce the proper judgment.

VILLEINS, were a sort of people under the Saxon government in a condition of downright servitude, who were employed in the most servile works, and were said to have belonged to the lord of the soil like the cattle upon it. They were either villeins *regardant*, that is, annexed to the manor or land, or in *gross*, *i.e.*, annexed to the person of the lord. The tenure by which villeins held their land was termed *villenage*, from which tenure we are said to drive our copyholds.

VIVUM VADIUM. A living pledge or mortgage. Where a man borrows a sum of money of another (suppose 200*l.*) and grants him an estate as of 20*l.* per annum to hold till the rents and profits shall repay the sum so borrowed, in this case the land or pledge is said to be *living;* it subsists and survives the debt, and immediately on the discharge of that reverts back to the borrower.

VOLUNTARY CONVEYANCE. Conveyances are termed *voluntary* when they are made without any valuable consideration.

W.

WARRANT OF ATTORNEY, is a written authority directed to one or more attorneys to appear for the party executing it, in some court, and there to receive a declaration at the suit of the party to whom the warrant is given and to confess the same, or to suffer judgment to pass against him by *nil dicit*, or otherwise. It also generally contains an authority to the attorney to execute a release of errors; and on this account it is that a warrant of attorney must be under seal; but if it be to confess judgment merely it need not be under seal.

WASTE, is the destroying by a tenant for life or years of any of those things which are not included in temporary profits of the land, and which would tend to the injury or loss of the person entitled to the inheritance. Waste is either *voluntary* or *permissive*, the former being an act of commission, the latter being an act of omission.

WELSH MORTGAGE, is one by which the proviso for redemption does not oblige the mortgagor to pay the money on a particular day, but allows him to do it at any indefinite time, thus giving him a perpetual right of redemption.

WILL OR TESTAMENT, is a written instrument by which a person makes known what he wishes or *wills* to be done with his property, &c., after his death. Wills were technically divided into *wills* or *devises*, and wills or *testaments*, the former having reference to real estate, the latter to personal estate. But there cannot now be said to be any difference between them. See 1 Vict. c. 26.

WILL, ESTATE AT. An estate at will is the interest which a person has in lands or tenements during the will or permission of another. But strictly it is held at the will of both parties.

WRIT OF INQUIRY. A judicial writ directed to the sheriff commanding him to *inquire* the amount of damages which a party who has obtained an interlocutory judgment is entitled to.

WRIT OF TRIAL. Formerly, when an action was brought in one of the Superior Courts, and the amount sued for was under 20*l*., and there was no particular question of fact or law, instead of the cause being tried at *nisi prius* it was tried before the sheriff, and for this purpose a *writ of trial* was issued. By the 30 & 31 Vict. c. 142, s. 6, however, this writ is abolished.

Y.

YEAR BOOKS, are the books containing the reports of cases adjudged or determined in the courts of law from the beginning of the reign of Edward II. to the end of Edward III., and from the commencement of the reign of Henry IV. to the end of Henry VIII. They are called *year books*, because they were published *annually* from the notes of certain persons who received a stipend from the Crown for their employment.

YEARS, ESTATE FOR. An estate for years is the interest which a man has in lands and tenements for a term or number of years agreed upon.

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